CLERK'S COPY.

Vol. I

542707 Sup Et

TRANSCRIPT OF RECORD

Supreme Gourt of the United States OCTOBER TERM, 1940

No. 610

GEORGE COUPER GIBBS, INDIVIDUALLY AND AS ATTORNEY GENERAL OF THE STATE OF FLOR-IDA, ET AL., APPELLANTS.

118.

GENE BUCK, INDIVIDUALLY AND AS PRESIDENT OF THE AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS, ET AL.

No. 611

GENE BUCK, INDIVIDUALLY AND AS PRESIDENT OF THE AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS, ET AL, APPEL-LANTS,

GEORGE COUPER GIEBS, INDIVIDUALLY AND AS ATTORNEY GENERAL OF THE STATE OF FLOR-IDA, ET AL.

APPRALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE HOSTHERN DISTRICT OF PROBUS

BLANK PAGE

SUPREME COURT OF THE UNITED STATES OCTOBER TERM, 1940

No. 610

GEORGE COUPER GIBBS, INDIVIDUALLY AND AS ATTORNEY GENERAL OF THE STATE OF FLOR-IDA, ET AL., APPELLANTS,

GENE BUCK, INDIVIDUALLY AND AS PRESIDENT OF THE AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS, ET AL.

No. 611

GENE BUCK, INDIVIDUALLY AND AS PRESIDENT OF THE AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS, ET AL., APPEL-LANTS,

GEORGE COUPER GIBBS, INDIVIDUALLY AND AS ATTORNEY GENERAL OF THE STATE OF FLORIDA, ET AL.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA

VOL. I

INDEX

Ort	ginal Print
Record from D. C. U. S., Northern District of Florida	1 1
Bill of complaint.	1 1
Exhibit "A"—Agreement between J. Flacher & Bro.	特别特点 生态。
and Deems Taylor, March 16, 1923	36 37
and Deems Taylor, March 16, 1923	86 87

JUDO & DEFWEILER (INC.), PRINTERS, WASHINGTON, D. C., PERSUARY 3, 1941.

INDEX

Want I Com D. C. C. S., Northern District of Florida Con-		
tinued	Original	Print
Bill of complaint—Continued	Original	Frine
Exhibit "B"—Agreement between Carl Fischer, Inc., and American Society of Composers, Authors, etc.,		
April 12, 1985	87	*88
Exhibit "C"—Agrement between Gene Buck and American Society of Composers, Authors, etc.,		
June 25, 1935	41	42
Exhibit "D"—Articles of Association of American		
Society of Composers, Authors, etc	44	45
Exhibit "E"—Senate Bill No. 679—Florida Statute.	64	65
Exhibit "F"—Agreement between American Society of Composers, Authors, etc., and Isle of Dreams	-	
Corp., January 15, 1936	- 60	70
Exhibit "G"—Agreement between American Society		
of Composers, Authors, etc., and Marianna The-		74
Exhibit "H"—Agreement between American Society of Composers, Authors, etc., and Thirty-One West		74
Adams Street Corp., January 8, 1987	74	75
Motion for temporary injunction (omitted in print-		
ing)	75	
Order convening three-judge court	97	77
Monton to dismiss	79	78
Opinion, per curiam	84	82
Order granting motion for interlocutory injunction		84
Findings of fact and conclusions of law		86
Order of Supreme Court substituting George Couper		•
Gibbs, attorney general, for Cary D. Landis, de-		
ceased		94
Supplemental bill of complaint		94
Motion to dismiss bill and supplemental bill		100
Answer to bill of complaint and supplemental bill of		
complaint		100
Order for hearing		110
Further supplemental bill of complaint		111
12, 1969	187	180
Exhibit "N"Act to amend Chapter 17807, Laws of		
Exhibit "O"—Senate Bill No. 1020—Tennessee stat		189
ute		141
Exhibit "P"—Tennessee decree	158	153
Exhibit "Q"—List of affiliated societies, members		
of A. S. C. A. P., etc Defendants' objections to the filing of plaintiffs' proposed "Further Supplemental Bill, of Complaint"		155
(omitted in printing)		
Defendants' motion to dismiss "Further Supplementa	l	400
bill of Complaint" Transcript of hearing before three-judge Court, Jackson	168	179
ville, Florida, October 19, 1989 (omitted in printing)	170	

ord from D. C.U. S., Northern District of Florida -Co	Original	Print
Motion and affidavits for leave to file further supp	le-	
mental bill of complaint, bring in new defendan	ts,	
substitute certain defendants and for further te		
porary injunction (omitted in printing) Order granting leave to file further supplemental bi		
etc		100
Supplemental findings of fact and conclusions of law.		180
Defendant's answer to further supplemental bill		102 (
complaint		185
Motion to dismiss counterclaim (omitted in printing)	304	
Notice of trial and final hearing	306	1 190
Depositions of witnesses taken in New York, N. Y., Fe	eb-	
ruary 6-9, 1940		191
Irving Caesar	310	192
Oross		213
Redirect	360	220
Deems TaylorDirect	362	220
Cross	377	229
Edgar LeslieDirect	AND DESCRIPTION OF THE PERSON	235
Cross	416	251
Redirect		254
Fred E. AhlertDirect		260
Cross		271
Will Von Tilzer Direct		273
Cross		289
Redirect		298
Walter S. Fischer Direct		299
		301
		326
(BEAN TO SEE STREET) 이 경기를 하고 있다면 보다면 보다면 보고 있다면 보다면 보고 있다면 보고 있다면 보다면 되었다면 되었다면 없다면 없다면 없다면 없다면 없다면 없다면 없다면 다른데 없다면		332 343
		343
Gustav SchirmerDirect	AND THE RESERVE OF THE PARTY OF	352
Saul H. Bornstein Direct		360
Cross		371
George W. Meyer	The state of the state of	378
Cross		396
Herman Greenberg Direct		397
	759	442
Cross	Mary Street Street Street	451
Redirect	791	461
Recross		462
Irving Berlin	728	425
Ocoss		441
Redirect		441
statement of evidence at trial—Gainesville, Florid		
April 15-16, 1940	796	468 W
Caption and appearances	796	468
Colloquy	797	104

Record	from	D.	C. U.	8.,	Northern	District	of I	Florida—Con-
tinue	d						15	

	evidence at trial—Gainesv 1940—Continued	THE RESERVE OF THE PARTY OF THE	riginal	Print
	of Edwin Claude Mills	The second secon	832	486
restimony	or market contact market	Cross	871	512
		Redirect .	888	522
	John Gregg Paine		890	524
1 - W		Cross	908	535
	William B. Richardson.	Direct	910	537
		Cross	923	544
* * *	Russell S. Jones		987	558
100	Louis T. Belviso	The second secon	948	559
4 4 5 6		Cross	954	564
	James W. Baldwin		960	. 567
		Cross	964	570
1	W. Walter Tyson		972	575
		Cross	978	579
4	L. S. Mitchel		982	582
		Cross	987	580
	Edwin Claude Mills			
10	(recalled)	Direct	994	. 589
100	John Gregg Paine			
	(recalled)	Direct	1009	596
Argument	by Mr. Frohlieb		1015	600
	by Mr. Ellis		1032	612
	by Mr. Boggs		1047	62
	by Mr. Widersan		1053	62
	of Sigmund Spaeth		1058	62
		Cross	1100	65
		Redirect .	1142	67
	Edwin H. Morris	Direct	1143	678
		Cross	1168	692
1	Ella Herbert Bartlett	Direct	1187	700
		Cross	1218	720
	Jerome Kern	Direct	1235	730
	Sigmund Romberg		1259	74
	Gene Buck		1277	75
	STATE STATE OF THE		1322	78
	Ernest Priesman	Direct	1361	80
		Cross	1367	81
		Redirect .	1370	81
	Harry Elmer Taylor	Direct	1372	81
		Cross	1376	811
	Anne Paul Nevin	Direct	1377	81
		Cross	1382	82
	Joseph Malec	Direct	1403	88
The state of		Cross	1415	84
	The state of the s	Redirect .	1438	85
0	A Karley San Court of	Recross .	1441	86
	John J. Gillin		1442	86
		Cross	1460	88
MAN THE TANK		Redirect .	1518	91
	The state of the s	COURSE DOOR AND THE PARTY OF TH	THE RESERVE OF THE PARTY OF THE	91

Record from D. C. U. S., Northern District of Florida Con-		
Statement of orders let tolar Galacian		
Statement of evidence at trial—Gainesville, Florida, April 15-16, 1940—Continued		
Recital re admission in evidence of exhibits in	Original	Print
Nebraska case	1505	
Stipulation as to statement of evidence, depositions and	1525	916
exhibits	1200	017
Statement of exhibits	1526	917
Plaintiffs' trial exhibits:	1020	918
1—Alphabetical gummed list of publishing		
houses	1528	918
2-List of Gene Buck's compositions	1529	919
3-Contract, Broadcaster & Broadcast	1020	919
Musie, Inc.	1530	920
4-Letter from E. C. Mills to L. S. Mit-	1000	020
chell	1534	924
5—Copy of bill introduced in Florida legis-		02
lature (same as Exhibit "M" to fur-		*
ther supplemental bill)	1535	925
6-Contract, Harms, Inc., with Fields,		
etc	1536	926
7-Contract, Harms, Inc., with Gershwin.	1537	927
8 Contract, Harms, Inc., with Porter	1544	931
9A-Contract, Herbert with Witmark.		
dated June 8, 1910	1551	935
9B-Contract, Herbert with Witmark,		
dated April 2, 1914	1551	935
9C-Contract, Herbert with Witmark,	Nº Nº	1
dated September 6, 1808	1551	935
10-Contract, Herbert with Witmark,		
dated August 9, 1905	1551	936
11—Contract, Herbert with Witmark, dated		
Oct. 23, 1906	1551	. 936
12-Contract, Herbert with Witmark, dated		
March 27, 1908	1552	936
13—Contract, Herbert with Harms, etc.		
dated — 16, 1919	1553	936
14—Copyrights, Herbert, "The Red Mill" 15—Copyrights, Herbert, "Naughty Mari-	1560	942
etta"	1700	
16-Copyrights, Herbert, "M'lle. Modiste"	1562	944
17A—Renewals of copyrights, "M'lle.	1564	945
Modiste"	1807	040
17B—Renewals of copyrights, "The Red	1567	946
Mill"	1560	040 -
18—Renewals of copyrights, "Babes in Toy-	1000	948
land"	1571	980
	1572	951
Defendants' trial exhibits:		
A-1—Compilation showing number of mu-		
. cal compositions copyrighted from		
July 1, 1900 to November 27, 1969		
by publishers mentioned in ASCAP	1	
stickers (Plaintiffs' Ex. 1, above)	1578	058

Becord from D. C. U. S., Northern District of Florida—Con-

Stipulation as to Statement of evidence, depositions and exhibits—Continued.

atement of exhibits—Continued	*	
Defendants' trial exhibits:—Continued	Original	Print
A-2-List of musical compositions copy-		
righted by Broadway Music Cor-		
poration	1577	955
A-3-Tabulation of copyrights -ASCAP,		
1922		958
A-4-Tabulation of copyrights-Foreign af-		
filiates of ASCAP, 1922	1585	964
A-5-Original and renewal registrations		
of copyrights, 1912 to 1939	1586	965
A-6-Contract, Florida West Coast Broad-		
casting Co	1587	966
A-7-Contract, CBS and WDAE	1588	967
A-8-Minutes of ASCAP's Board meeting,		
June 3, 1932	1591	971
A-9-Contract, ASCAP and NBC	1595	974
A-10-Contract, ASCAP and ABC	1599	980
Plaintiffs' deposition exhibits:		
1-List of compositions by Irving Caesar. 2		986
2-Agreement between Irving Caesar and		
ASCAP	1604	986
3-List of compositions by Deems Taylor.	1605	987
4—Agreement between Deems Taylor and		
Society	1605	987
5—List of compositions by Edgar Leslie	1606	988
6-List of compositions by Fred E. Ahlert.	1607	989
7—Standard uniform popular songwriters		
contract	1608	990
8-A to 8-K—Consists of eleven printed cata-		
logues of various kinds of music pub-		
lished by Carl Fisher, Inc	1609	991
9-List of compositions by Oscar Hammer-		3 7 7 2
stein, 2nd	1610	992
10-List of compositions by George W.		-
Meyer		993
11—Articles of Association, ASCAP (same		
as Exhibit "D" to bill of complaint).	1612	994
12-Chapter 609, Laws of New York	1613	094
13-List of members of Society and affil-		
iated foreign Societies. (Same as		
Ex. "Q" to further supplemental bill		
of complaint)	1614	995
14—Resolution of Society, May 17, 1939	1615	995
15M—Agreement between The Performing	.0	
Right Society, Limited, and ASCAP—	I do not a feet	
January 6, 1983	1616	996
15-A to 15-T Contracts between Society	,	
and foreign Societies. Substantially same as Ex. 15-M	****	4001
Bume as way 10-M	1630	1004

Record from D. C. U. S., Northern District of Florida—Continued

Stipulation as to statement of evidence, depositions and exhibits—Continued.

Amores—Continued.	4.00	
Statement of exhibits—Continued		
Plaintiffs' deposition exhibits:—Continued	Original	Print
16-List of radio stations receiving free li		
censes		1005
17-A-P-Contracts (16), ASCAP with Flor		1000
		4000
ida radio stations		1005
17 B—Contract with Station WJAX, Jack		
sonville, Fla.		1005
17 L—Agreement between Station WDAI		
and Society	. 1333	1006
18-Radio contracts in effect in Florida		
June 9, 1937		1007
19 Radio contracts in effect in Florida		
June 12, 1939		1007
		1007
20—Table of contracts between ASCAP and		
motion picture theatres in Florida		
June 9, 1937	. 1637	1008
21—Table of contracts between ASCAP and		
motion picture theatres in Florida		
June 12, 1939		1014
22-Agreement between Society and R. L.		
Bailey		1020
23-Table of contracts, ASCAP with Flor	1010	1020
		4004
ida hotels, June 9, 1937	1646	1021
24—Table of contracts, ASCAP with Flor		
ida hotels, June 12, 1939		1024
25-Contract, ASCAP and W. N. Urmey		1027
26—Table of contracts, ASCAP with restau-		
rants in Florida, June 9, 1937	1651	1027
27—Table of contracts, ASCAP with restau-		
rants in Florida, June 12, 1939		1029
28-Agreement, ASCAP and Jack Broome of		1020
Reef Grill	1652	1029
29—Table of contracts, ASCAP with dance		
halls in Florida, June 9, 1937		1030
30-Table of contracts, ASCAP with dance		
halls in Florida, June 12, 1939	1654	1031
31-Agreement between Society and H. W.		
Diaz		1032
32—Table of contracts, ASCAP with amuse-	1001	1032
ment places in Florida, June 9, 1937.		1032
33—Table of contracts, ASCAP with amuse-		
ment places in Florida, June 12, 1939.	1657	1035
34-Memo. of agreement between Society		
and Ringling Brothers and Barnum	See The see	
& Bailey Show Combined		1038
35-Form letter used by Society in warning	1000	1000
persons using their music for profit		
without a license	1658	1038

INDEX

Record from D. C. U. S., Northern District of Florida-Continued

Stipulation as to Statement of evidence, depositions and exhibits—Continued.

Statement of exhibits—Continued

ment of exhibits—Continued		
Plaintiffs' deposition exhibits:—Continued	Original	Print
36-Form letter used by Society in warning		
persons using their music for profit		
without a license	1658	1038
37-Form letter used by Society in warning		
persons using their music for profit	- 11.	
without a license	1658	1038
38—Table of number of licenses in force in	1000	1000
all States, 1922 to 1939	1659	1038
39—Table of revenue and expense of ASCAP	1000	1099
in Florida, 1935 to 1939	1000	1000
	1660	1039
40—Table of radio data from "Radio	1001 0	****
Today", 1936-1940	1661	1039
41—Table: Radios in Florida	1662	1039
42—Table: Retail radio sales	1663	1040
43—Bulletin, Federal Radio Commission—		
600 radio stations in United States	1664	1041
44—Bulletin, Federal Radio Commission—		- 1
Statistics of income	1672	1049
45-Radio statistics from "Radio Today",		
January, 1939	1674	1050
46-Radio statistics from "Radio Today",		
January, 1940	1676	1050
47-List of broadcasting stations in Flor-		9
ida, members of National Association		
of Broadcasters, January, 1940	1677	1051
48-List of compositions by Irving Berlin	1678	1052
49-A-United States Census Bureau; Busi-		
ness Census, 1983	1679	1052
49-B-United States Census Bureau; Busi-		
ness Census, 1933	1680	1053
49-C-United States Census Bureau; Busi-		
ness Census, 1933	1681	1053
50-A-Federal Radio Commission-Finan-	2.	
cial data	1682	1054
50-D-Federal Radio Commission-Finan-		
cial data	1682	1054
50-B, C, E-Omitted.		
51-Table of radio station rates, Florida	1683	1055
52-United States Census Bureau; Business		
Census, 1935—Radio Broadcasting	1684	
53—United States Census Bureau; Business	1001	
Census, 1935—Places of amusement.	1685	1057
54—United States Census Bureau; Business	1000	1001
Census, 1985—Hotels	1686	1057
55—Table, Monthly chain income NBC,	1000	1001
CBS, MBS	1687	1058
One, man	2001	1000

tinued	as to Statement of evidence, depositions and		
	as to Statement of evidence, depositions and -Continued	1	
	ent of exhibits—Continued		
	aintiffs' deposition exhibits:—Continued	Original	Print
	56—Omitted.		0
	57—"Broadcasting" Year Book 1939, p.		
	그 사고 아내는 그 아니는 그 이 아니는 그는 것이 되었다. 그는 것은 사람들이 되었다면 하는 것이 되었다면 그는 것이 없는 것이 없는 것이 없는 것이 없는데 그렇게 되었다면 했다.	1000	1050
	192	1688	1059
	176	1689	1060
	198, 199	1690	1061
		1692	1000
ER 364	188	1092	1062
	stations in United States	1694	1065
	62—Omitted.		
	63—Omitted.		
	64-Page 74 of 1940 Yearbook of Broadcast-		
	ing Magazine and contains a list of new broadcast stations, authorized		
	by the FCC in 1939	1696	1065
	65—Page 76 of 1939 Yearbook of Broad-	1000	1000
	casting Magazine	1007	1000
		1007	1006
	66—"Broadcasting" Year Book, 1940, p. 308		1006
	67—"Broadcasting" Year Book, 1939, p. 78.	1699	1066
	68-A-"Broadcasting" Year Book, 1940, p.	954200	
	179	1700	1066
	68-B-"Broadcasting" Year Book, 1940, p.	1 1	
	101	1701	1066
	70-Advertisement, Oct. 15, 1937-"Broad-	1 6 V	
	casting"	1703 .	1008
4.4	72-A-Page 216 of 1969 Yearbook	1705	1069
	72-B—Page from yearbook of Broadcasting	1100	1000
	Magazine showing stations affiliated	i Kang	
	with the World Transcription System 73—Omitted.	1706	1069
	74—Omitted.		
	75-A—Advertisement of the World Broad-		
	casting System	1708	1070
III THE	76—Table, gross license fees collected by ASCAP, 1985-1939	1709	1070
	77-Table, amounts received by ASCAP		
	from foreign societies, and amounts	-	4000
	paid to same, 1936-1939	1710	1071
	bers, 1932-1939	1711	1072

Record from D. C. U. S., Northern District of Florida-Con-		
tinued	Original	Print
Stipulation as to statement of evidence, depositions and exhibits—Continued		
Statement of exhibits—Continued	W+0 45	
Defendants' deposition exhibits:	Original	Print
A-Standard uniform popular songwriters		
contract	1712	1072
B-Form of contract, composer with Song-		
writers Protective Association	1714	1073
C-Letter signed by Hugo B. Anderson,		10.0
June 9, 1932	1718	1078
D-Letter signed by Robert A. Hess, No-	2120	1010
vember 18, 1931	1719	1079
E-Letter signed by Paul R. Summers,	2110	1010
December 6, 1932	1720	1080
F-Letter signed by Dwain M. Ewing, Feb-	1120	1000
ruary 1, 1935	1721	1081
G—Letter signed by Herman Greenberg,		1001
June 6, 1983	1722	1082
Findings of fact and conclusions at law	1723	1082
Opinion of three-judge court, Hutcheson, J	1734	1092
Final decree	1747	1104
Defendants' petition for appeal	1750	1106
Assignment of errors	1751	1107
Order allowing defendants' appeal	1797	1110
Cost bond on appeal(omitted in printing)	1798	1110
Citation on appeal(omitted in printing)	1802	1
Appellants' praecipe to clerk	1805	1110
Plaintiffs' petition for appeal	1808	1113
Assignment of errors	1810	1114
Order allowing plaintiffs' appeal	1817	1119
Cost bond on appeal(omitted in printing)	1818	
Citation on appeal(omitted in printing)	1822	
Docket entries	1848	1120
Appellants' praecipe to clerk	1850	1122
Appellees' praecipe to clerk '	1857	1124
Amendment to appellants' praecipe to clerk	1859	1126
Amendment to appellees' praecipe to clerk	1861	1127
Certificate of clerk(omitted in printing)	1863	
Statement of points to be relied upon and designation of		
parts of record to be printed, Case No. 610	1864	1128
Appellees designation of additional parts of the record, Case		VIII 4
No. 610	1865	1131
Statement of points to be relied upon and designation of		
parts of record to be printed, Case No. 611	1866	1132

BLANK PAGE

BLANK PAGE

IN UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF FLORIDA, GAINESVILLE DIVISION

Gene Buck, Individually and as President of the American Society of Composers, Authors and Publishers; Carl Fischer, Inc., G. Schirmer, Inc., Irving Berlin, Inc., Deems Taylor, Oley Speaks, William J. Hill, Anne Paul Nevin, Ella Herbert Bartlett and Jane Sousa, Complainants,

against

CARY D. LANDIS, Individually and as Attorney General of the State of Florida, E. Dixie Beggs, Jr., Individually and as State Attorney for the First Judicial Circuit of Florida; O. C. Parker, Jr., Individually, and as State Attorney for the Second Judicial Circuit of Florida; A. K. Black, Individually, and as State Attorney for the Third Judicial Circuit of Florida; William A. Hallowes, III. Individually and as State Attorney for the Fourth Judicial Circuit of Florida; J. W. Hunter, Individually and as State Attorney for the Fifth Judicial Circuit of Florida, Chester B. McMullen, Individually and as State Attorney for the Sixth Judicial Circuit of Florida; Murray Sams, Individually and as State Attorney for the Seventh Judicial Circuit of Florida; J. C. Adkins, Individually and as State Attorney for the Eighth Judicial Circuit of Florida; Murray W. Overstreet, Individually and as State Attorney for the Ninth Judicial Circuit of Florida; L. Grady Burton, Individually and as State Attorney for the Tenth Judicial Circuit of Florida; G. A. Worley, Individually and as State Attorney for the Eleventh Judicial Circuit of Florida; Roy D. Stubbs, Individually and as State Attorney for the Twelfth Judicial Circuit of Florida; J. Rex Farrior, Individually and as State Attorney for the Thirteenth Judicial Circuit of Florida; John H. Carter, Jr., Individually and as State Attorney for the Fourteenth Judicial Circuit of Florida; Louis F. Maire, Individually and as State Attorney for the Fifteenth Judicial Circuit of Florida; "John Doe" and "Richard Roe", Defendants

[fol. 2] BILL OF COMPLAINT-Filed February 7, 1938

Complainants, suing on behalf of themselves and others similarly situated bring this Bill of Complaint against the aforementioned defendants, and allege as follows:

- 1. The complainant, American Society of Composers, Authors, and Publishers (hereinafter referred to, for brevity's sake, as the "Society"), at all times hereinafter mentioned, was and still is an unincorporated association duly organized and existing under the laws of the State of New York, and has its principal place of business, in the Borough of Manhattan, City of New York, in the State of New York, in the Southern District of New York. The membership of the Society exceeds 1,000, and is comprised of authors, composers and publishers of musical works; said Society was organized and has been issuing licenses for the public performance for profit of musical compositions copyrighted by its members to users located throughout the United States, including the State of Florida, and said Society has protected the performing rights of musical works copyrighted by said members respectively, against infringement because of the public performance thereof for profit, and continues so to do.
- 2. Complainant, Gene Buck is President of said Society; because said membership, as is above indicated, is exceedingly numerous and it would be impracticable to join all the members of said Society as parties plaintiff, and as the issues and questions involved here are of common and general interest to all of the members of said Society, the said Society has duly authorized and empowered the said Gene Buck as President thereof to institute and prosecute this suit in its behalf, and this action is accordingly brought by Gene Buck as President, for and on behalf of said Society, as well as in his own individual right.
- 3. Complainant, Carl Fischer, Inc., is a corporation, duly organized and existing under and by virtue of laws of the State of New York, having its principal place of business in the City of New York in said State; complainant G. Schirmer, Inc., is a corporation, duly organized and existing under and by virtue of the laws of the State of New York, having its principal place of business in the City of New York in said State; complainant, Irving Berlin, Inc., is [fol. 3] a corporation, duly organized and existing under and by virtue of the laws of the State of New York, having its principal place of business in the City of New York in said State; all of said last mentioned complainants have been for upwards of twenty-five years and are presently engaged in the business of publishing musical compositions

in the State of New York and elsewhere, and are hereinafter for brevity's sake referred to as "Publishers".

- 4. Complainant, Gene Buck, for upwards of twenty years has been and now is an author of lyrics of musical compositions; complainant, Deems Taylor, for upwards of fifteen years has been and now is a composer of musical and dramatico-musical works; complainant, Oley Speaks, for upwards of fifteen years has been and now is a composer of musical compositions; complainant, William J. Hill, for upwards of five years has been and now is a composer of musical compositions; complainant, Anne Paul Nevin, is the widow of Ethelbert Nevin, who was for more than twenty years a composer of musical compositions, and who departed this life in 1901; complainant, Ella Herbert Bartlett, is the daughter of Victor Herbert, who was for over twenty years a composer and who departed this life in the year 1924; complainant, Jane Sousa, is the widow of John Philip. Sousa, who was for more than thirty years a composer and who departed this life in the year 1932, having been a member of the Society for many years. All of the complainants in this paragraph mentioned are citizens of the United States and all are residents and citizens of the State of New York, and of the Southern District of New York, with the exception of Buck and Sousa, who are residents of the Eastern District of New York, and Nevin, who is a resident and citizen of the State of Maine.
- 5. Upon information and belief, the defendant, Cary D. Landis, is the duly elected, appointed, qualified and acting Attorney General of said State; the defendant, E. Dixie. Beggs, Jr., is the duly elected, appointed, qualified and acting State Attorney for the First Judicial Circuit in said State: the defendant, O. C. Parker, Jr., is the duly elected, appointed, qualified and acting State Attorney for the Second Judicial Circuit in said State; the defendant, A. K. Black, is the duly elected, appointed, qualified and acting State Attorney for the Third Judicial Circuit in said State: the defendant William A. Hallowes, III is the duly elected, [fol. 4] appointed, qualified and acting State Attorney for the Fourth Judicial Circuit in said State; the defendant, J. W. Hunter, is the duly elected, appointed, qualified and acting State Attorney for the Fifth Judicial Circuit in said State: the defendant, Chester B. McMullen, is the duly elected, appointed, qualified and acting State Attorney for

6. The value of the matter in dispute herein between complainants and defendants is in excess of the sum of \$3,000.00, exclusive of interest and costs.

[fol. 5] 7. This action is a suit in equity arising under the Constitution and laws of the United States, as will hereafter more particularly appear. Among other things, this suit is brought to repress and prevent the deprivation under color of the said Statute of certain rights, privileges and immunities secured to complainants by the Constitution and laws of the United States and the Constitution of the State

of Florida, that is, the right to have and entry exclusive rights under certain copyrights granted and owned by the respective complainants, other than the Society, as well as the exclusive right to publicly perform for profit such copyrighted musical compositions, which has been vested in the complainant Society for a limited period, as hereinafter set forth, which rights have been respectively granted to the complainants pursuant to Article 1, Section 8 of the Constitution of the United States, and the Copyright Act of 1909 as amended (35 Stat. L. 1075-1078 U. S. Code, Title 17); to repress and prevent the deprivation of such rights without due process of law and without the equal protection of the laws, and to repress and prevent the impairment of obligations of contracts heretofore made by the respective complainants and others similarly situated; to repress and prevent the operation and enforcement of the said State Statute as an ex post facto law, and to repress and prevent the interference by the State of Florida with the federal judicial power and the privileges of complainants as citizens of the United States by denying the complainants the right of access to the Federal Courts; to repress and prevent a compulsory, irrevocable grant of special privileges to the users of complainants' copyrighted music in the State of Florida in violation and disregard of complainants' rights; to repress and prevent the taking of complainants' property without just compensation and for a private purpose; to repress and prevent the enforcement of said State Statute as a special law granting to corporations, associations or individuals a special privilege and retroactive in its operations; and this suit, among other things, involves the question as to whether or not each of the complainants may combine with a substantial number of other persons, corporations or associations for the purpose of licensing the public performance for profit of their copyrighted musical compositions without the State of Florida and without doing any act within the State of [fol. 6] Florida; whether or not the complainants have the right to issue to citizens of Florida licenses for the public performance for profit of their copyrighted musical compositions copyrighted and owned by complainants, apart from the sale of copies of such compositions in the form of sheet music; whether the complainants have the right to act collectively in combination with a substantial number of persons, corporations or associations for the purpose of

granting blanket licenses at fixed fees for the public performance for profit of the complainants' copyrighted musical compositions to users located within the State of Florida: whether the State of Florida has the right to require and compel complainants to fix a price for their copyrighted musical compositions for all uses and purposes and to affix such price upon the musical composition in whatever form the same may be published, printed, manufactured, or otherwise prepared for use or rendition; whether the State of Florida has the right to declare void and unenforc-able all existing contracts, agreements, licenses and arrangements made by complainants with or granted to users in the State of Florida; whether the State of Florida may impose a penalty upon complainants for collecting or attempting to collect the moneys due them under said existing contracts; whether the State of Florida has the right to grant to owners, lessees, operators or managers of radio broadcasting, radio receiving or radio rebroadcasting stations within that State, the right to receive, broadcast and rebroadcast complainants' copyrighted musical compositions without the payment to complainants of any license fee or other compensation for such use; whether the State of Florida has the right to grant to owners, lessees, operators or managers of any theatre, moving picture house or similar place for amusement and public performance within Florida, the right to receive, use and render or cause to be received, used or rendered the copyrighted musical compositions of the combinations declared unlawful by said Statute, including the musical compositions of complainants, without the payment to complainants of any license fee or other compensation for such use; whether the State of Florida has the right to prevent the complainants from suing users in Florida for infringement of their respective copyrighted musical compositions or for loss or damage within Florida for the use or rendition, including the public performance for profit, of their respective copyrighted [fol. 7] musical compositions originating or emanating from outside the State of Florida and performed, rendered or otherwise used within said State; whether the State of Florida has the right to subject complainants and others similarly situated to the jurisdiction of the Courts of Florida, by providing that any representative of any combination declared to be unlawful under said State Statute shall be deemed an official representative and agent of such combination and shall be construed to be doing business within Florida, and that service of any process may be had against complainants and others similarly situated by service upon said representative or the agent of any such representative. with the same force and effect as if service were made upon the duly elected officer or acting agent or other official representative; whether the State of Florida may prevent complainants from engaging an agent in said State, by enacting that any such agent shall be subject to the penal provisions of the said State Statute; whether the State of Florida may dissolve the Society, which is organized under the laws of the State of New York and has its principal place of business therein, by an action brought within the State of Florida for committing any of the acts specified in said Statute to be in violation thereof upon service secured by service upon any representative that the Society may have within said State: whether the State of Florida may require the complainants and others similarly situated under penalty of being held in contempt of Court and being fined \$100.00 for every day that they shall fail or refuse to furnish such documents, to file with the Clerk of the Court in which any civil or criminal action or proceeding is pending against complainants, or others similarly situated, exact copies of all documentary evidence, records or data in the possession or under the control of complainants and others similarly situated (being defendants in such suit or proceeding) pertaining to the issues in said action; whether said State Statute is sufficiently definite to apprise complainants of the acts for which they may be subjected to the penal provisions of said State Statute, including, fine, imprisonment, contempt and penalties therein provided for, and whether or not the defendants, in threatening to enforce the provisions of said State Statute against complainants are not depriving the complainants of their property and their right to liberty without due process of law, and whether they are not denying the complainants the equal protection [fol. 8] of the laws; whether the State of Florida may compel complainants and others similarly situated to be witnesses against themselves and be subjected to unlawful search and seizure, and whether the State of Florida may impose conditions upon the enjoyment of copyright in the United States by the 44,000 members of foreign societies. who have authorized the Society to grant blanket licenses in the United States on their behalf, which conditions are

not embraced in, but are in conflict with existing Treaties, Presidential Proclamations, and the Copyright Act of the United States.

This suit is brought to repress and prevent defendants from proceeding under and by virtue of the provisions of said State Statute, and from illegally and unlawfully threatening complainants and their employees, representatives and agents with fine, arrest, imprisonment and penalties under the color of said State Statute.

8. The Publishers, in furtherance of their business of publishing musical compositions, acquired from writers and composers the right to publish musical compositions written and composed by such writers and composers, respectively. either by outright purchases of such rights or upon a royalty basis and will in the ordinary and usual course of their business continue to acquire similar rights in many thousands of musical compositions; in the great majority of cases, complainants acquired and will in the ordinary and usual course of their business continue to acquire from such writers and composers the right to secure copyright in the compositions purchased by Publishers; when such compositions are published by Publishers, two of the best copies thereof are deposited with the Register of Copyrights at Washington, D. C., and the required fee paid to him with a claim for copyright registration, and said compositions are always registered for copyright with the Register of Copyrights in Washington, D. C.; pursuant to the provisions of the Copyright Act of 1909 (hereinafter referred to as the "Copyright Act"), and on each and every one of the compositions published by publishers there appears upon the first page of music at the foot thereof, the copyright notice prescribed by said Copyright Act; each of the Publishers in the course of its many years of conducting its respective business, has registered many thousands of compositions with the Register of Copyrights, and each has se-[fol. 9] cured for its respective corporation the ownership of the copyright in many thousands of musical compositions; in the music business or trade the totality of copyrights of a particular publisher is known as its "catalogue"; the great majority of each Publisher's respective catalogue is likewise copyrighted in foreign countries, as well, and copyright protection is obtained by said publishers for their catalogues in almost every civilized country

of the world; none of the copyrights owned by the complainants has a situs within the State of Florida; that each publisher's business is extensive, and that the value of the copyrights owned by each publisher is in excess of \$1,000,-000.00; old copyrights expire currently and are renewed, sometimes by the publisher and sometimes by the writer and composer, or such others as may be entitled to renewal under the Copyright Act, and new compositions are constantly being registered; the rights in the copyrights are manifold and many of them are and have been granted by the Publishers to others separate and apart from other rights and are subdivided as to locality, extent and term; in many cases certain rights are reserved to the author or composer and disposition thereof is not within the control or knowledge of the publisher complainant, and is not ascertainable.

- 9. Each of the publishers has secured copyright registration in many thousands of musical compositions of which copyrights each of said publishers is respectively the proprietor; said copyrights have been secured in manner similar to that described hereinabove, and with respect to each of said copyrights, the publishers have respectively obtained copyright cards, and all such copyrights are on file in the office of the Register of Copyrights in Washington, D. C., as prescribed by Statute, and copies of such cards are not annexed hereto in order to avoid unduly encumbering this complaint, but reference is made hereto and the same are incorporated herein, and copies of said cards will be produced upon the trial of this case, if necessary.
- 10. Complainant Gene Buck wrote the lyrics of many musical compositions, for over twenty years last past, and from time to time he entered into contracts with various music publishers, pursuant to which such publishers duly secured copyright in such respective compositions by publication, deposit and registration of the works, as required by the Copyright Act; said copyrights expire by limitation [fol. 10] of time at various dates in the future, and complainant Buck is advised and verily believes, that he is entitled to secure a renewal of each such copyright for an additional period of twenty-eight years, in his own name and on his own behalf, in each of said works; in such renewals of copyright, complainant Buck will have all the rights that vested in the proprietor of the original copy-

rights; among such works are the following: "Tulip Time", "Hello Frisco", "Garden of My Dreams", "No Foolin", "The Love Boat", "Florida, The Moon and You"; for over fifteen years, complainant Buck wrote the words and lyrics for the Florenz Ziegfield Follies, as well as the words and lyrics of other musical shows produced with great success; Buck's right to collect royalties from his works, as aforementioned, as well as his right to secure renewals of copyright therein are worth in excess of \$100,000.

11. Complainant Deems Taylor composed the music for two musical compositions entitled "Banks O' Doon" and "Captain Stratton's Fancy", in 1923, and entered into a contract for the publication of said compositions with J. Fischer & Bro., a music publisher; a copy of said contract is hereto annexed and marked Exhibit "A"; said publisher secured copyright of said compositions by publication and deposit of the work, as required by the Copyright Act. in and about the year 1923, and said copyrights expire by limitation of time in the year 1951, and complainant Taylor is advised and verily believes, that he is entitled to secure a renewal of said copyrights for an additional period of twenty-eight years in his own name and on his own behalf: in such renewals of copyrights, complainant Taylor will have all the rights vested in the proprietor of the original. copyrights; the complainant Taylor has composed the music for a great many other works, among them "The King's Henchman", "Peter Ibbetson" and "Through A Looking Glass Suite"; "Peter Ibbetson" has been successfully produced at the Metropolitan Opera House in the City of New York; Taylor's right to collect royalties from his works, as aforementioned, as well as his right to secure renewals of copyright therein are worth in excess of \$100,000. Under said contract, Exhibit "A", and other contracts between complainant Taylor and his publisher, said complainant is entitled to receive a certain percentage of the market or retail price on every copy of sheet music sold by his pub-[fol. 11] lisher averaging about 10% thereof. Under the contract between complainant Taylor and the Society, complainant Taylor is entitled to such a portion of 50% of all royalties collected as the classification committee of the writer members of the Society allots to him; in other words. complainant Taylor receives approximately 50% of all

moneys collected by the Society as royalties or license fees for the public performance for profit of his copyrighted musical compositions; if said Statute be enforced, complainant Taylor will be entitled to receive only an average of 10% of the moneys paid to the publisher by users in Florida publicly performing for profit his copyrighted musical compositions, and said Taylor will have no right to participate in said royalties in any other manner, or to license the right to publicly perform for profit on any other basis.

12. Complainant Oley Speaks composed the music for many musical compositions and entered into numerous contracts for the publication of said compositions with the complainant G. Schirmer, Inc., a music publisher; said publisher secured copyrights in said compositions by publication, deposit and registration of the works, as required by the Copyright Act, and said copyrights will expire by limitation of time at various dates in the future, twentyeight years from the respective dates of registration of said works; and complainant Speaks is advised and verily believes that he is entitled to secure renewals of said copyrights for an additional period of twenty-eight years respectively, in each one in his own name and on his own behalf: in such renewals of copyright complainant Speaks will have all the rights that vested in the proprietor of the original copyrights; among the works composed by Speaks are the following: "Sylvia", "Road to Mandalay" and "Morning": Speaks' right to collect royalties from his works, as aforementioned, as well as his right to secure renewals of copyright therein are worth in excess of \$100,000. Under the contracts between complainant Speaks and his publishers, said complainant is entitled to receive a certain percentage of the market or retail price on every copy of sheet music sold by his publisher averaging about 10% thereof. Under the contract between complainant Speaks and the Society, complainant Speaks is entitled to such a portion of 50% of all royalties collected as the classification committee of the writer members of the Society allots to him; [fol. 12] in other words complainant Speaks receives approximately 50% of all moneys collected by the Society as royalties or license fees for the public performance for profit of his copyrighted musical compositions; if the said Statute be enforced, complainant Speaks will be entitled to receive only an average of 10% of the moneys paid to the publisher by users in Florida publicly performing for profit his copyrighted musical compositions, and said Speaks will have no right to participate in said royalties in any other manner, or to license to the right to publicly perform for profit on any other basis.

13. Complainant Hill composes music, and he has entered into contracts for the publication of musical compositions composed by him with Shapiro, Bernstein & Co., a a music publisher who has secured copyrights of said compositions by publication, deposit and registration of such works as required by the Copyright Act, and said copyrights expire by limitation of time at various dates in the future, twentyeight years from the date of registration of such respective works, and the complainant Hill is advised and verily believes that he is entitled to secure renewals of said copyright for an additional period of twenty-eight years in his own name and on his own behalf; in such renewals of copyright complainant Hill will have all the rights that vested in the proprietor of the original copyrights; the complainant Hill has composed the music for a great many works, among them "The Last Roundup", "Chapel in the Moonlight", "The Old Spinning Wheel", "Lights Out", "Wagon Wheels", "Empty Saddles", "The Glory of Love" and "Timber"; Hill's right to collect royalties from his works, as aforementioned, as well as his right to secure renewals of copyright therein are worth in excess of \$100,000. Under the contracts between complainant Hill and his publishers, said complainant is entitled to receive a certain royalty on every copy of sheet music sold by his publisher averaging about one and one-half cents on each such sale. Under the contract between complainant Hill and the Society, complainant Hill is entitled to such a portion of 50% of all royalties collected as the classification committee of the writer members of the Society allots to him; in other words, complainant Hill receives approximately 50% of all moneys collected by the Society as royalties or license fees for the public performance for profit of his copyrighted musical compositions; if the said Statute be enforced, complainant [fol. 13] Hill will be entitled to receive only an average of 6% of the moneys paid to the publisher by users in Florida publicly performing for profit his copyrighted musical compositions, since such sheets of music are ordinarily sold for about twenty-five cents; and said Hill will have no right to

participate in said royalties in any other manner, or to license the right to publicly perform for profit on any other basis.

14. Complainant Anne Paul Nevin is the widow of Ethelbert Nevin, who wrote and composed, among others, the following musical compositions which were duly published and copyrighted: "The Rosary", "Mighty Lak a Rose", "Venetian Suite" and "Narcissus," and she has obtained renewals of some of said compositions in her own name. and is advised and verily believes that she will be entitled under the copyright act to obtain renewals of all of such compositions as and when the original terms thereof expire, during her lifetime; Ella Herbert Bartlett is the daughter of Victor Herbert, the foremost composer in America, who wrote and composed, among others, the following works, all of which were duly registered for copyright: "Kiss Me Again", "Natoma", "Sweet Mystery of Life", "I'm Falling in Love With Someone", "Mlle. Modiste", "Red Mill". "Naughty Marietta", "Irish Fantasy" and "Pan Americana"; she has renewed some of the works on which the original term of copyright has expired, and is advised and believes that she will be entitled to renew the other works as and when they expire; Jane Sousa is the widow of John Phillip Sousa, who wrote and composed a great many compositions, and who was known as the,"March King"; among his compositions are the following: "Stars & Stripes Forever", "Adeste Fidelis", "Washington Post March" and "El Capitan"; said compositions were duly registered for copyright and said complainant Jane Sousa has renewed some of said compositions, and is advised and believes that she will have the right to renew the other works as and when they expire; the rights, which the complainants mention in this paragraph have, in the renewal of the works written and composed respectively by the husbands and father of said complainants, are of great value and are worth in excess of \$100,000. with respect to each of said complainants. Under their respective contracts with their publishers, said complainants are entitled to receive a certain percentage of the market or retail price on every [fol. 14] copy of sheet music sold by their publishers averaging about 10% thereof. Under the respective contracts between said complainants and the Society, said complainants are entitled to such a portion of 50% of all royalties

collected as the classification committee of the writer members of the Society allots to them; in other words, said complainants receive approximately 50% of all moneys collected by the Society as royalties or license fees for the public performance for profit of their copyrighted musical compositions; if the said Statute be enforced, said complainants will be entitled to receive only an average of 10% of the moneys paid to their respective publishers by users in Florida publicly performing for profit their respective copyrighted musical compositions, and said complainants will have no right to participate in said royalties in any other manner, or to license the right to publicly perform for profit on any other basis.

15. Prior to 1917, none of complainants, nor the respective husbands and father of complainants mentioned in the next preceding paragraph, received any compensation for the public performance for profit of the musical compositions respectively owned, published, copyrighted, written or composed by them; although the copyright Statute gave to the complainants the exclusive right to publicly perform for profit their respective musical compositions. users of musical compositions throughout the country refused to recognize such exclusive rights in complainants, and persistently and stubbornly refused to pay any royalties for such public performance for profit, but, on the contrary, users of music throughout the country publicly performed for profit the musical compositions owned, written and composed by complainants respectively, without payment of any royalties; complainants and others similarly situated were unable to enforce their exclusive rights in the public performance for profit of their compositions; individually they had no means of enforcing such rights; they could not employ investigators throughout the country to detect infringement because such public performances for profit were fugitive, fleeting and ephemeral, and no record was made by users of such performances; complainants had no effective means of employing lawyers throughout the United States to bring infringement suits against users for the wrongful public performance for profit of their musical compositions; and complainants and [fol. 15] others similarly situated were helpless to enforce the rights granted to them by the Copyright Act; those of the users of music who might be willing or inclined to pay

for the public performance for profit of the compositions of complainants and those similarly situated, were unable to do so because it was necessary to have ready access to a great number of musical compositions to be performed in a single evening and at a moment's notice; under such circumstances it was impossible to get in touch with the individual owners of the particular musical compositions. many of whom were scattered throughout the world; the users of music, consisting primarily of hotel owners, innkeepers, cabaret and dance hall proprietors and motion picture exhibitors were organized into very powerful trade associations who employed counsel to defend such users against claims of infringement for the unauthorized performance of public performance of musical works of complainants, and others similarly situated, and such associations of users even offered to defend infringers who were not members of their respective associations.

16. On February 13, 1914, a small group of composers, authors and publishers, under the leadership of Victor Herbert, Irving Berlin, Silvio Hein, William Jerome, Gustav Kerker, John Golden, Glen McDonough, Ernest R. Ball, Raymond Hubbell, James Weldon Johnson, Louis A. Hirsch, Henry Blossom, George Maxwell, Jay Whitmark, the complainant Gene Buck and the complainant publisher Irving Berlin, Inc., and others, organized a voluntary unincorporated non-profit association under the laws of the State of New York, which they designated as the American Society of Composers, Authors and Publishers (hereinafter referred to for brevity's sake as the "Society"); said Society was formed for the purpose of licensing to users of music throughout the country the right to publicly perform for profit the works of its members; said Society did not and does not deal in any commodity, did not and does not deal in any sheet music, exercised and exercises no function with respect to mechanical rights of reproduction, and was and is limited solely as aforesaid to the right of public performance for profit; said Society has functioned continuously since said date; from its very commencement it encountered tremendous opposition on the part of organized groups of users of music throughout the country; one of the functions of the Society was to detect infringements of the right of public performance for profit of its [fel. 16] members and to institute suits on behalf of its

members for such infringements; it also licensed establishments throughout the country to publicly perform for profit the musical compositions of its members upon fair and reasonable license fees; the organized groups of users of music resisted efforts to compel them to pay compensation for the performance for profit of the Society's members: with the advent of radio broadcasting in 1922, powerful groups of radio broadcasters throughout the United States joined with the other groups, aforementioned, in opposing the Society; such groups of users attacked the Society by interposing defenses in suits for infringement, by complaints made to the Attorney-General of the United States, by a suit brought against the Society in the State of New York, by attempts made annually in Congress for over fifteen years last past to amend the Copyright Act so as to permit the users of music to publicly perform for profit the musical compositions of the Society's members without compensation, by initiating tax legislation in various States, and lately by introducing into various States bills similar to the Statute of the State of Florida herein complained of, with a view of destroying and nullifying the rights of the Society's members given to them by the Copyright Act.

17. At the present time there are approximately 123 publisher members of the Society; there are approximately 1000 writer and composer members of the Society; from time to time said publisher, writer and composer members have entered into contracts with the Society, wherein and whereby said members of the Society have assigned to the Society the exclusive right of public performance for profit in their respective musical compositions for periods of five years at a time, the last contracts were signed prior to and became operative January 1, 1936; annexed hereto and made part of this complaint is the contract entered into on the 12th day of April, 1935 between complainant Carl Fischer, Inc. and the Society and marked Exhibit "B"; annexed hereto and made part of this complaint is the contract entered into on the 25th day of June, 1935 between complainant Gene Buck and the Society and marked Exhibit "C"; the other complainants, G. Schirmer, Inc., Irving Berlin, Inc., Deems Taylor, Oley Speaks, Anne Paul Nevin, Ella Herbert Bartlett and Jane Sousa, prior to January 1, 1936, executed and delivered to the Society [fol. 17] contracts in form similar to the contracts entered into between the Society and Carl Fischer, Inc. and Gene Buck; all of said contracts executed and delivered by the complainants to the Society expire by limitation of time on the 31st day of December, 1940; all of the publisher members of the Society have executed contracts similar to Exhibit "B"; all of the other members of the Society have executed contracts similar to Exhibit "C".

- 18. Annexed hereto and made a part of this complaint and marked Exhibit "D" are the present Articles of Association of the Society.
- 19. Complainants' respective businesses and occupations are lawful ones, and the pursuit thereof cannot be prohibited directly or indirectly; the rights vested in the complainants by the Constitution of the United States and the Copyright Laws enacted by the Congress thereunder are exclusive and cannot be limited, curtailed, forfeited, confiscated or circumscribed by any of the Statutes of the several States, including the State of Florida.
- 20. The users of music have uniformly objected to dealing with individual copyright owners for the licensing of the public performance for profit of particular musical compositions; the practice of the Society has been to license theatres according to their seating capacity, radio broadcasting stations according to their income, power and coverage, and hotels, cabarets and dance halls according to the respective size, business done, number and size of orchestras, methods of performance, income and standing; licenses are granted by the Society to such users in which all the musical compositions owned, written, and composed by members of the Society are made available to such users for use at any time within the contract period without requiring the specific consent of the owner of the particular composition played: such licenses include likewise the right on the part of the users to publicly perform for profit the musical compositions copyrighted, written and composed by members of societies throughout the world organized on a basis similar to the Society with whom Society has contracts, so that by licenses made with the Society the users obtain the right to publicly perform for profit the works of over 44,000 composers, authors and publishers; [fol. 18] said rights granted by the Society are of great value to the users who have consistently and uniformly

objected to the separate licensing of individual compositions, on the ground that it would involve a great amount of bookkeeping, clerical hire and expense; the system of blanket licenses conferred by the Society performs a useful service for the users and enables them to have available at all times for their own special purposes a vast reservoir of musical compositions that are pleasing and entertaining to the public, classical, modern, as well as popular; and the Society since 1914 has looked after the interests not only of its own members, but of other members of the musical profession who have been in distress by reason of age and indulgence and who otherwise have been unable to support themselves, and the Society has paid sick benefits to such individuals, as well as to its members, and has looked after the widows and orphans of indigent composers and writers throughout the United States whose families would otherwise have been objects of public charity; the individual complainants herein have neither the resources. funds, organization or ability to protect the musical convrighted works in which they are authors and composers, or which they own, or in which they have renewal rights. or obtain renewals, against infringement by unauthorized performances for profit within the State of Florida in their individual capacity; and have been compelled, as aforesaid. to unite and combine for the purpose of preventing such infringement and enforcing the rights granted to them under the Copyright Act, and such rights cannot be enforced by said individual complainants without such combination; if the individual complainants were to create an agency within the State of Florida to protect against infringement of their respective musical copyrights by unauthorized public performances for profit and to issue licenses thereunder to users in the State of Florida and check up on the accuracy of uses reported, the cost thereof to each of such individual complainants would be greatly in excess of \$10,000., which expenditure would be necessary in the employment of investigators, clerical help, accountants and lawyers.

21. Upon information and belief the State Statute was sponsored by an organized group of radio broadcasters and other users of music in an endeavor to destroy the Society [fol. 19] so that they might have for their own selfish aggrandizement free access to all musical compositions

without compensation; said group of users caused a similar statute to be enacted by the State of Montana in or about February, 1937, known as Chapter 90 of the Laws of 1937 of the State of Montana; and they caused to be enacted in the State of Washington in or about March, 1937, a similar statute known as Chapter 218 of the Laws of 1937 of the State of Washington; and a similar statute in the State of Nebraska, known as Legislative Bill No. 478 of the Laws of 1937, and a similar statute of the State of Tennessee, known as Chapter 212 of the Public Acts of 1937; and similar bills have been prepared by such group of users who have circularized the legislatures of other States with a view to presenting to them for enactment similar statutes in all the forty-eight States; said State Statute was passed by the legislature of the State of Florida (as were the similar bills passed by the legislatures of the States of Montana, Washington, Nebraska and Tennessee) without an adequate opportunity for a hearing being afforded to complainants and others similarly situated. The following radio broadcasting stations in the State of Florida are members of the National Association of Broadcasters, which association on behalf of its members, for many years last past, has acted and presently acts collectively in dealing with the Society, as well as for other purposes:

Station	Owner	Location
WFLA	Florida West Coast Broadcasting Company, Inc.	Clearwater
WRUF	State and University of Florida	Gainegrille
WMBR	Florida Broadcasting Co	Jacksonville
WIOD	The Isle of Dreams Broadcasting Corp.	Miemi
WQAM	Miami Broadcasting Co., Inc	Miami
WDBO	Orlando Broadcasting Co	Orlando
WSUN	Chamber of Commerce of	St. Petersburg
	St. Petersburg	
WDAE	The Tampa Times Company	Tampa

- 22. Annexed hereto and made a part of this complaint is a copy of the State Statute marked Exhibit "E".
- 23. The Society pursuant to the rights vested in it by the contracts made with complainants herein, and other simi-[fol. 20] larly situated, has for many years entered into numerous contracts which are now in force between it, acting on behalf of and jointly for all the members of Society and for the joint benefit of all such members, and users of music

within the State of Florida. Under these contracts the Society has licensed such users to publicly perform for profit the musical compositions of its members; under these contracts, the Society licenses the users to perform all of the compositions in the repertoire of the Society and its affiliated foreign societies for a single license fee, fixed and determined by the Society in negotiations with the respective users.

With respect to radio broadcasters, the Society, after extensive negotiations with the National Association of Broadcasters, has charged a sustaining fee based upon the power, wattage, listening audience and other important factors connected with each station, plus a fixed percentage of the revenues derived by each radio broadcasting station from its sponsored programs, after making certain deductions.

With respect to motion picture theaters, the Society negotiated for a long time with the trade associations of theatre owners, and finally, a rate of ten cents per seat per theatre was agreed upon as a fair and reasonable rate. That rate was in operation for a great many years. Recently, in negotiations with the theatre owner associations, the rate was modified so that it is now, as follows:

10¢ per seat per year for theatres containing 800 seats and under;

15¢ per seat for theatres containing 801 to 1599 seats;

20¢ per seat above that number; and

5¢ per seat for all theatres under 800 seats, operating only three days a week.

The uniform rate for hotels with radio in each room is \$1.00 per room per year; in addition thereto, there is an annual rate for hotels having orchestras or giving other musical entertainment for the profit of the management, based upon the size, prestige, gross business, nature of entertainment, size of the orchestra, extent of music used and audiences attracted thereby, and the profits derived therefrom.

The license fees in all these cases are fixed and determined by the Society on behalf of all its members, after negotiations with either the trade association or the individual [fol. 21] user; there are about 367 contracts in force at the present time from which the Society received for the year 1936 the sum of \$59,306.81; on or about the 15th day of

January 1936, the Society entered into a contract with Isle of Dreams Broadcasting Corporation, proprietor of a radio broadcasting station having call letters WIOD, a copy of which is hereto annexed and made a part hereof and marked Exhibit "F" which contract is presently in force and effect and has been duly performed both by the Society and by the radio broadcasting station; in addition to said contract, there are 11 other contracts made between the Society and the radio broadcasters in the State of Florida similar to Exhibit "F" presently in force and up to the enactment of said State Statute performed both by the Society and each respective broadcaster; on or about the 28th day of November, 1936, the Society entered into a contract with Marianna Theatres, Inc., proprietor of a motion picture theatre, known as the Ritz Theatre, Panama City, Florida, a copy of which is hereto annexed and made a part hereof and marked Exhibit "G", which contract is presently in force and effect, and was up to the enactment of said State Statute duly performed both by the Society and by the motion picture theatre exhibitor; in addition to said contract, there are 170 other contracts made between the Society and the motion picture theatres in the State of Florida similar to Exhibit "G" presently in force and up to the enactment of said State Statute being performed both by the Society and each respective motion picture theatre exhibitor; on or about the 8th day of January, 1937, the Society entered into a contract with Carling Hotel at Jacksonville, Florida, a copy of which is hereto annexed and made a part hereof and marked Exhibit "H", which contract is presently in force and effect, and was made up to the enactment of said State Statute duly performed both by the Society and by the hotel owner; in addition to said contract, there are 183 other contracts made between the Society and hotels, restaurants, dance-halls and miscellaneous in the State of Florida similar to Exhibit "H" presently in force and up to the enactment of said State Statute duly performed both by the Society and each respective hotel, restaurant, dance-hall and miscellaneous establishment proprietor.

24. Societies similar in purpose and scope to the Society have been in existence and are organized and operating [fol. 22] under and by virtue of the laws of Argentina, Austria, Belgium, Brazil, Bulgaria, Czecho-Slovakia, Denmark, England, Finland, France, Germany, Hungary, Italy,

8 15

Jugoslavia, Norway, Portugal, Roumania, Spain, Sweden and Switzerland.

By vitue of various treaties and proclamations of the Presidents of the United States, issued pursuant to Section 8 of the Copyright Act, and which are now in force between the United States and Argentina, Austria, Belgium, Brazil, Bulgaria, Czecho-Slovakia, Denmark, England, Finland, France, Germany, Hungary, Italy, Jugoslavia, Norway, Portugal, Roumania, Spain, Sweden and Switzerland, reciprocal rights are granted to citizens of the United States and to citizens of the foreign countries named whereby the citizens of such foreign countries are extended copyright protection within the United States, upon compliance with the Copyright Act with respect to their several musical compositions, and citizens of the United States are extended reciprocal protection, with respect to their several musical compositions, under the copyright acts of said countries upon complying with the copyright acts thereof. reciprocal protection is based upon the determination that certain reciprocal conditions for the enjoyment of copyright exist as between the United States and such respective foreign states or nations, and is accorded under and by virtue of proclamations and treaties establishing the existence of such conditions, and having the force and effect of law.

Under contracts with foreign societies, the Society has the exclusive right to and does license within the United States, the public performance for profit of the musical compositions copyrighted by all the members of said respective foreign societies, and said foreign societies under such contracts have the exclusive right to, and do license within the territorial limits of their respective countries, the public performance for profit of the musical compositions copyrighted by members of the Society. The catalogues of musical compositions of said foreign societies exceed many hundreds of thousands of compositions composed and written by more than 44,000 members of such foreign societies, the exact number of compositions being utterly impossible to state at any one time on account of the expiration, renewal and obtaining of new copyrights. The right to perform the musical compositions embraced [fol. 23] in said foreign catalogues are included in the blanket licenses issued to individual licensees by the Society in the United States. Their 44,000 members are scattered throughout the world, and they are not required to fix a selling price for all uses of their respective musical compositions in order to enjoy copyright protection in the United States under the Treaties, Proclamations and United States Laws aforesaid:

25. Upon information and belief, compliance with said State Statute would require the Society and its licensees to abandon the contracts between them and would compel each of the complainants, as well as other members of the Society. similary situated, to rescind their respective contracts with the Society unless they were willing to have their works used for purposes of public performance for profit in Florida by any purchaser of a sheet of music, phonograph record, music roll, electrical transcription or film, who pays the price thereof fixed by the publisher of such composition or the manufacturer of such phonograph record, music roll, electrical transcription or film; under Section 1 (e) of the Copyright Act of 1909, as amended, any manufacturer of parts of instruments serving to reproduce mechanically a musical work may manufacture such a reproduction of a copyrighted work upon payment to the copyright proprietor of a royalty of two cents on each such part manufactured, but the Copyright Act provides that the payment of such royalty shall not free such articles or devices from further payment of royalties in case public performances for profit are made by means of such articles or devices; many thousands of the copyrighted musical compositions owned and published by complainants, as well as others similarly situated, have been recorded by manufacturers of phonograph records, music rolls, electrical transcriptions and other parts of instruments serving to reproduce mechanically such copyrighted musical compositions; the Copyright Act does not impose any other duty upon such manufacturers, except the payment of two cents for each record, and complainants have not received any other moneys except the payment of such two cents, and have no right to demand any further sums from such manufacturers; and complainants, and others similarly situated, have no control over the manner of sale and disposition of such phonograph records, music rolls or [fol. 24] electrical transcriptions of their said copyrighted musical works, and they cannot compel the manufacturers thereof to affix any price upon said phonograph records, music rolls or electrical transcriptions, or to collect any price

for the public performance for profit thereof, or if collected, to remit or give to them the sums so collected for the public performance for profit thereof. Complainants and others similarly situated are not willing to permit their musical compositions to be performed within the State of Florida publicly for profit upon such a basis or on any basis wherein the fee or compensation would be included in the price paid for a copy of the sheet of music of said composition or phonograph record, music roll, electrical transcription or film thereof; complainants believe that such a requirement and compulsory license would deprive them of the exclusive rights vouchsafed to them under the Copyright Law.

26. If each complainant would be required to act independently in order to have the right to determine and fix license fees, each complainant would be required to have an investigator covering each of the places of public entertainment and amusement in the State of Florida to determine whether any infringements took place and to determine whether payments were being made in accordance with performances; the establishment of such an agency would cost each of the complainants many thousands of dollars and would in fact greatly exceed the revenue which each of them might hope to collect in the State of Florida; all the users of music in the State of Florida paid for the music of the 44,000 composers represented by the Society and its affiliated socities for the year 1936, the aggregate sum of \$59,306.81. In the year 1936, users located in the following counties of the State of Florida paid to the Society for licenses to publicly perform for profit musical compositions of complainants and the other members of the Society and all other Societies throughout the world affiliated with the Society, the following sums:

County		1	Amount
Alachula	 		\$518.39
Bay	 		137.55
Bradford	 		27.00
Brevard	 		414.94
Calhoun	 		34.40
Citrus	 *******		63.00
[fol. 25] Clay	 		7.50
Columbia	 		90.00
Dade	 **********		21,770.36

		1	4 4	20
County				Amount
DeSoto				183.95
Duval				6,161.85
Escambia				1 740 45
Franklin				1,748.45
Godsen				67.50
Hamilton	•••••		· · · · · · · · · · · · · · · · · · ·	79.50
Hernando		24	· · · · · · · · · · · · · · · · · · ·	23.75
Hillshorone	eh			
Holmes	5H			6,334.10
Jackson			**********	29.30
Tofferson				130.40
Leferette		********		20.50
Lake C				20.00
	* * * * * * * * *			. 190.79
Lee				82.27
Median			6	535.02
Madison				38.20
Manatee .			• • • • • • • • • • • • • • • • • • • •	1,080.05
Marion	* * * * * * * * *			164.56
Monroe				. 154.00
Massau				30.00
Okaloosa .				20.70
Orange				3 691 61
Osceola				. 77.00
I ann Deach				1.791 42
radco				50.00
Finelias				9 646 40
FOIR				1.047 22
Lucham				97.99
St. Johns.				181 43
St. Lucie				260.55
oanta nosa				05.20
Seminole				300 60
Sumter				25.40
Suwanee				40.00
Taylor				40.00
Volusia				1,706.26
Walton				42.00
Washington				25.00
0.01				20.00
Total				\$59,306.81
				. 400,000,01

[fol. 26] The proportion collected from each county represents the approximate proportions that were collected from

each county for other years prior to 1936, and similar sums will be collected in the same proportion in the future unless prevented by the operation of the said State Statute.

27. Complainants will be able to license users of their music in Florida without doing any act in said State, but unless the injunction prayed for herein is granted, complainants will be unable to issue any licenses from without the State of Florida without incurring the penalties of said State Statute. The copyrighted works of the complainants and of all the other members of the Society and of the affiliated societies have at one time or another been publicly performed for profit in the State of Florida, and a great number of the copyrighted works of the complainants are being constantly performed in the State of Florida, and will continue to be performed in that State.

28. The following radio broadcasting stations within the State of Florida, and their respective locations, are affiliated with, and rebroadcast programs emanating from without the State of Florida, and respectively, in the studios of the Columbia Broadcasting System, Inc., National Broadcasting Co. Inc. and the National Independent Broadcasters, Inc.:

Columbia Broadcasting System, Inc.

Station	Location
WMBR	 Jacksonville
WQAM	 Miami
WDBO	
WDAE	 .Tampa
WJNO	
WCOA	 Pensacola

National Broadcasting Co.

WFLA.	6					0 "6					6		6			Clearwater
WJAX.					. 1					×						Jacksonville
WIOD.			0						9	9						Miami
WSUN.					0	6 .1	 									St. Petersburg

National Independent Broadcasters, Inc.

THE PARTY		T .	** *
WMFJ	 	Daytona	Beach

It is a general practice with respect to national networks to have musical programs performed in the City of New

York and in other large cities and broadcast from the radio [fol. 27] station where such program is performed. At the same time the program is transmitted by telephone wires to other stations located throughout the country, and particularly the aforementioned broadcasting stations located within the State of Florida so that the broadcast originating in the home studio of the National Broadcasting Company or of the Columbia Broadcasting Company or of the National Independent Broadcasters, Inc., or of the Mutual Broadcasting System, as the case may be, is simultaneously performed by means of a broadcast from the connecting stations, including the abovementioned stations within the State of Florida; the programs broadcast by many stations outside of the State of Florida, whether affiliated or not with any station located within the State of Florida are heard within the State of Florida, and such programs include the broadcasting of music copyrighted by the members of the Society, including the complainants herein; broadcasting stations without the State of Florida broadcast daily in excess of 100 copyrighted works of the complainants and other members of the Society and of its affiliated societies, which broadcasts are heard on receiving sets within the State of Florida.

29. The said State Statute prevents complainants from licensing the broadcasting of their compositions outside of the State of Florida if such broadcast may be heard within or transmitted by wire or otherwise to the State of Florida; it deprives complainants of the means of detecting infringements in the State of Florida; it attempts to deprive complainants of unrestricted access to the Federal Court for redress for infringement of their copyrights; it sets up a system of compulsory price-fixing of copyrights in destruction of existing copyrights and of rights to obtain the full benefits of the Copyright Act in securing future copyrights; it interferes with the publication of complainants' copyrighted compositions by compelling them to keep a record of all purchasers of copies or records thereof in the State of Florida, and imposes upon them the impossible task of determining whether public performances for profit were given or authorized by purchasers of the sheets of music or of phonograph or other records thereof in the State of Florida, or whether such performances were made or authorized by persons who had purchased sheets of music or records without that State or [fol. 28] who had obtained so-called "professional" or complimentary copies thereof; unless the enforcement of this State Statute is restrained by this Court, other States in addition to Florida, Montana, Washington, Nebraska and Tennessee may enact similar Statutes requiring complainants to fix a price for all uses in each of such States, or may enact a compulsory price-fixing system entirely different from that enacted in each of the said States, all of which would work undue hardship on complainants and would violate the spirit of the Constitution and the Copyright Laws enacted thereunder.

30. Upon information and belief said State Statute is class legislation; it is aimed only at proprietors of musical copyrights and no other copyrights, and it exempts the performance of musical works which are not copyrighted under the laws of the United States but which are protected at common law. A great many forms of copyright and kinds of copyrighted works are presently and constantly dealt in, licensed, sold and otherwise made available within the State of Florida, such as motion pictures, dramas, newspapers, magazines, books and periodicals, none of which are affected by said State Statute.

31. The complainant publishers, in the regular course of their business, ship sheets of music from New York State into the State of Florida, as well as to all the other States of the Union. This is done solely in connection with their publishing business and has nothing to do with the licensing of the right of public performance for profit or any other rights given to the publishers or copyright owners under the Copyright Act. The purchasers of the sheets of music may use the same for purposes of private performance or for non-profit public performances, but they may not use them for the purpose of making mechanical records or for the purpose of public performance for profit, or for any other uses and purposes granted to the owners of the copyright by the Copyright Act.

The publishers and the Society have kept the sale of sheet music, which is the material object copyrighted, separate and apart from the copyright itself, in accordance with

the provisions of the Copyright Act.

Under the State Statute, this right of separability is wholly denied. Under their contracts with the Society, the

publishers reserve the right to restrict the public perform-[fol. 29] ance for profit of their musical compositions for the purpose of protecting investments in dramatico-musical productions wherein investments of-hundreds of thousands of dollars are involved. Unless the publishers or other copyright owners can assure investors in such productions that there will be no indiscriminate and wholesale public performances of the "hit" musical compositions in such productions, the production rights will be wholly destroyed. Under the State Statute, the only alternative left to complainant publishers is to wholly refrain from shipping sheets of music through the channels of interstate commerce into the State of Florida, and said State Statute directly compels the complainant publishers to withhold shipping music into said State, except upon condition that they forego rights granted to them under the Constitution and the Copyright Laws of the United States.

32. Upon information and belief, the said State Statute is not a reasonable exercise of the police power; it is a pretext under which the State of Florida is attempting to usurp power to enact copyright laws delegated by the Constitution of the United States solely to Congress, and said State Statute interferes with the copyrights of the complainants and others similarly situated under the guise of an exercise of the police power of said State; the said State Statute, in truth and in fact, was enacted, not in the public interest, but rather for the private benefit and gain of a group of users of music in an organized effort to enable such users to have free access to the copyrighted works of complainants and others similarly situated, without paying compensation therefor, and without danger of being compelled to pay damages for infringement as provided for in the Copyright Act.

33. The system of licensing provided for in said State Statute would deprive complainants and others similarly situated of the right to enter into voluntary contracts licensing the public performance for profit of their copyrighted nusical works, and of the right to determine the conditions under which such works might be performed, and of the right to limit the frequency of the performance of such works in order to prevent the destruction of the performing right values thereof.

34. The defendants, and each of them, individually and as respective officials charged with the duties of enforcing [fol. 30] said State Statute have threatened to, and will enforce such State Statute in each and all of its terms and the whole thereof, and particularly against these complainants and others similarly situated, individually and as members of the Society, in the event that such complainants and others similarly situated refuse to accept or submit to a system of compulsory licensing; and said defendants have threatened to enforce the penal and confiscatory provisions of such Statute against complainants and others similarly situated in the event complainants and others similarly situated attempt to enforce the existing contracts between themselves and the Society and between the Society and citizens and residents of the State of Florida: or license or attempt to license persons, firms or corporations to publicly perform outside of the State of Florida musical compositions, which performances may be reproduced and reperformed within the State of Florida; or enter into license agreements without the State of Florida with residents or citizens of that State for the right or license to perform publicly for profit the musical compositions of the complainants and others similarly situated within the State of Florida; or enter into license agreements within the State of Florida with persons, firms or corporations, residents or citizens of that State, for the purpose of licensing them to publicly perform for profit the musical compositions of complainants and others similarly situated within or without the State of Florida; or take any means to detect infringements of their copyrighted musical works within the State of Florida; or bring any suits for infringement of their copyrights in their respective compositions by means of public performances for profit in the Federal Courts within or without the State of Florida: or fail or refuse to submit to the jurisdiction of the State Courts of Florida; and defendants have threatened in the event of the aforesaid contingencies, or any of them, to enforce the penalties provided for in said State Statute, and to proceed to prosecute complainants and others similarly situated, their employees and agents, criminally, for an alleged violation of said Statute.

35. Said Statute is in its terms so drastic, and the penalties attached to the violation of the terms thereof are so

great, that neither complainants nor others similarly situated may continue to grant licenses to users of music within the State of Florida or even to users of music without [fol. 31] the State of Florida if the public performance for profit of such music may be reproduced or performed within the State of Florida. There are 47 counties in the State of Florida, in each of which there are establishments publicly performing for profit the copyrighted musical compositions of members of the Society, including the other complainants herein, and the foreign societies with which the Society has reciprocal contracts, and if complainants attempt to issue licenses or collect from licensees or attempt to detect infringements of their copyrighted works in said counties they will be subjected to a multiplicity of suits and prosecutions unless restrained by this Honorable Court: complainants will be unable to secure any compensation for the public performance for profit of their respectice copyrighted musical compositions by means of rebroadcasting or by means of personal performance of artists, singers, musicians, orchestras, bands, actors, loud speakers radio, sound production or reproduction, apparatus or instrumentalities or electrical transcriptions, or by any other means of rendition whatsoever within the State of Florida from any radio broadcasting, radio receiving or radio rebroadcasting station, or in any theatre or motion picture house located in the State of Florida; complainants and others similarly situated will be unable to enforce any contracts made between them or on their behalf by the Society with residents or citizens of the State of Florida; complainants and others similarly situated, as well as the Society. have been compelled since the effective date of the Statute, to desist from licensing the public performance for profit of their copyrighted musical compositions in the State of Florida and have been deprived of all sources of revenue therefrom, and have been denied the privileges granted to them by the Copyright Act; and the Society has been compelled to desist from enforcing collection of payments under existing contracts between it and users since the effective date of said Statute, and has been compelled to desist from investigating infringements of the copyrights of complainants, and other members of the Society and its affiliated societies by means of the public performance for profit of their respective copyrighted musical compositions, and complainants will continue to suffer as aforesaid unless

this Court grant an injunction as prayed for; and the complainants and the Society and its affiliated societies have been and will be hindered, delayed and impeded in enforc-[fol. 32] ing their rights and remedies under the Copyright Act in the Federal Court located in the State of Florida, for infringements committed by users within the State of Florida by means of public performances for profit of the copyrighted musical compositions aforesaid, all because of the drastic provisions of the said State Statute and the numerous penalties, civil and criminal, to which the complainants will be liable in the event of any violation of said State Statute; and complainants and others similarly situuated will be unable to detect and sue for infringement of their copyrighted musical works within the State of Florida; unless this Court shall determine the validity and application of said Statute in this proceeding, complainants and others similarly situated will be deprived of the rights granted to them under the United States Constitution and the Copyright Act, and will be without any remedy for the enforcement of such rights within the State of Florida, and they will therefore be deprived of their property and liberty without due process of law, and denied the equal protection of the laws, all in contravention of Article I. Sections 8, 9 and 10, Article III, Section 2, Article IV, Section 2, and Article VI, Section 2, of the Constitution of the United States, and the Fourteenth Amendment to the Constitution of the United States, and Sections 1, 8, 11, 12 and 22 of the Declaration of Rights of the Constitution of the State of Florida, and Article III, Section 20 of the Constitution of the State of Florida; and complainants have no adequate remedy at law, and are relievable only in a court of equity and if complainants are not afforded the equitable relief prayed for herein, but are required to resist, when criminal prosecutions and other suits or proceedings are instituted under the State Statute, it will result in such a multiplicity of suits and entail such delay and so jeopardize and injure complainants in their persons and property as to make the remedy at law grossly inadequate.

36. Each of the complainants has received from the Society for the year 1936, as compensation for the public performance for profit of the complainants' works, respectively, in excess of the following sums: Carl Fischer, Inc. in excess of \$50,000.00; G. Schirmer, Inc. in excess of \$50,000.00;

Irving Berlin, Inc. in excess of \$50,000.00; Gene Buck in excess to \$5,000.00; Deems Taylor in excess of \$5,000.00; Oley Speaks in excess of \$5,000.40; William J. Hill in excess of [fol. 33] \$5,000.00; Anne Paul Nevin in excess of \$5,000; Ella Herbert Bartlett in excess of \$5,000.00; and Jane Sousa in excess of \$5,000.00; upon information and belief, complainants will be entitled to receive for the balance of the period for which they have entered into contracts with the Society, and for which the Society has contracts with users of music, similar amounts for each year, down to December 31, 1940, and such complainants will receive such amounts for said period if their right thereto is not interfered with and destroyed by such State Statute; approximately two-thirds of the revenue obtained by the Society and distributed to the complainants and others similarly situated, is derived from moneys paid for the right to perform publicly for profit by means of radio broadcasting, and if this Court does not interfere and restrain the enforcement of such State Statute, such revenue may be lost to the Society, and the complainants and others similarly situated will not participate in royalties from the public performance for profit by means of radio broadcasting, because such performances, even though given in other parts of the United States, may, under the provisions of such State Statute, be deemed a violation of such State Statute in the State of Florida, and complainants will lose the benefit of their said contracts with the Society and all the contracts made between the Society and users of music, and will receive no further moneys from public performance for profit by means of radio broadcasting of their musical compositions.

Said State Statute and each and every section thereof is unconstitutional and void under the aforesaid Articles and Sections of the Constitution of the United States, and the Fourteenth Amendment to the Constitution of the United States, in that it deprives complainants of their liberty and property without due process of law and the equal protection of the laws, impairs the obligation of contract, destroys the rights of complainants in their copyrighted works, nullifies valid contracts theretofore entered into, interferes with the Federal judicial power, destroys the privileges and immunities granted to complainants, and attempts to subordinate the Federal Constitution, Treaties of the United

States with foreign nations, Presidential Proclamations and the Copyright Act of the State of Florida, and to subject complainants to an unreasonable search and seizure of their properties, effects, papers and persons.

[fol. 34] 38. If defendants are not restricted in their threatened and attempted enforcement of such State Statute, complainants and others similarly situated will suffer great and irreparable loss, for which they have no adequate remedy at law, but are relievable only in court of equity.

Therefore, the complainants pray:

- 1. That defendants, and each of them, individually and in their respective capacities as officials of the State of Florida charged by said State Statute with the enforcement of the provisions thereof, be enjoined and restrained by temporary and permanent order of injunction of this Court, from bringing, directly or indirectly, and from permitting to be brought, directly or indirectly, any proceeding at law or in equity for the purpose of enforcing said State Statute, against the complainants and others similarly situated, representatives, employees, agents or any of them, and from interfering with all existing contracts entered into between complainants and others, including the Society and citizens and residents of the State of Florida, and from threatening to enforce against any citizens or residents of the State of Florida, the penalties of said Statute in the event such citizens and residents desire to carry out their contracts with Society or complainants and others similarly situated, and from prosecuting criminally the complainants, their representatives or agents, or any of them, or others similarly situated, for doing any act or thing to detect infringement and to enforce their respective rights under the Copyright Act in the Federal Courts of the State of Florida or elsewhere, and generally, from doing any act or thing to carry out or enforce any of the provisions of said State Statute; and that an order to show cause issue herein upon the application of the complainants, directed to the abovenamed defendants, and each of them, requiring them to show cause why a temporary injunction should not issue as prayed for herein.
- 2. That said State Statute, and each and every part and section thereof, be declared to be unconstitutional, illegal and void, and that a perpetual injunction be issued restrain-

ing the enforcement of said State Statute and each and every part and section thereof, as hereinabove prayed for.

3. That a writ of subpoena may issue to the defendants, requiring them to answer this bill of complaint fully and [fol. 35] truthfully, but not on oath, an oath being hereby waived, and that further and general relief be granted as the nature of complainants' case may require, or to equity may seem just and proper.

Wideman, Wardlaw & Caldwell, Solicitors for Complainants, Office & P. O. Address, 1400 Harvey Bldg., West Palm Beach, Florida. Frank J. Wideman, of Counsel. Gene Buck, J. Field Wardlaw, Manley P. Caldwell, of Counsel.

BLANK PAGE

AGEREMEN

between

- J. Fischer & Bro. (Inc.), New York City, party of the first part, and Deems Taylor of New York City party of the second part:
- 1. J. Fischer & Bro. agree to publish Banks O'Doon Captain Stratton's Fancy by Deems Taylor.
- II. J. Fischer & Bro. agree to defray all expenses made necessary to produce printe copies of the first and all subsequent editions of the musical compositions mentioned in Article I.
- III. Deems Taylor, party of the second part, or his assigns to receive in consideration of this agreement, ten per cent (10%) of the marked or retail price on every copy sold
- IV. In said J. Fischer & Bro., its successors or assigns, or legal representatives, shall be vested the exclusive right of copyrighting, publishing and vending the said musical compositions by Deems Taylor, party of the second part, or of making arrangements for so doing with its agents and representatives in all countries.
- J. Fischer & Bro. agree to make settlement annually in the month of January as of January First.
- VI. Copies of musical compositions mentioned in Article I. are to be printed and placed on sale when J. Fischer & Bro. find it convenient so to do.
- VII. It is further agreed that said Deems Taylor, party of the second part, shall forthwith sell, assign, transfer and turn over to J. Fischer & Bro., party of the first part, his copyright and all his title and interest in and rights under the same unto the said J. Fischer & Bro., for the consideration aforesaid.

VIII. In said J. Fischer & Bro., party of the first part, its successors or assigns shall be vested the rights during the full life of copyright to authorize or permit the performance of the musical compositions mentioned in Article I.

IN WITNESS WHEREOF the party of the first part has hereunto affixed its corporate seal and the party of the second part his hand and seal this Sixteenth day of March,

J. FISCHER & BRO.

Witness:

" Sering"	Franklayler (L. S.)
A. Schmitt	H. Roth

ž

Rec'd 4/25/35

Exhibit "B"

Igreement Between

Carl Fischer, Inc.

7

American Society

Composers, Authors & Publishers Thirty Rockefeller Plaza NEW YORK CITY

DATED:

April 12th, 1935.

25



called "Seciety"), in consideration contained, as follows: The Owner sells, assigns, transfers and sets over unto the Society for the term hereof, the entire exclusive right of public performance (as hereinafter defined), in each musical

Of which the Owner is a copyright proprietor; or

Which the Owner, alone, or jointly, or in collaboration with others, wrote, composed, published, acquired or owned; or

In which the Owner now has any right, title, interest or control whatsoever, in whole or in part; or

Which hereafter, during the term hereof, may be written, composed, acquired, owned, published or copyrighted by the Owner, alone, jointly or in collaboration with others; or

in which the Owner may hereafter, during the term hereof, have any right, title, interest or control, whatsoever, in whole or in part.

The exclusive right of public performance in every musical work shall be deemed assigned to the Society by this instrument and shall vest in and be the absolute property of the Society for the term hereof, immediately upon the work being written, composed, acquired, owned, published or copyrighted.

The rights hereby assigned shall include:

- (a) All the rights and remedies for enforcing the copyright or copyrights of such musical works, whether such copyrights are in the name of the Owner and/or others, as well as the right to sue under such copyrights in the name of the Society and/or in the name of the Owner and/or others, to the end that the Society pays effectively protect and be assured of all the rights hereby assigned.
- ments or arrangements, melodies or selections forming part or parts of musical plays and dramatico-musical compositions, the Owner reserving and excepting from this assignment the right of performance of musical plays and dramatico-musical compositions in their en-Rexclusive right of public performance of the separate numbers, songs, frag tirety, or any part of such plays or dramatico-musical compositions on the legitimate stage.
- written notice to the Society, to restrict, limit or prohibit the public performance by radio broadcasting of works the copyright of which is vested in the Owner, and the Society agrees that all licenses by it issued shall contain a provision reserving its right to restrict or limit, Provided further, that if the Owner notify the Society in writing to restrict, limit of prohibit the public performance of such copyrighted work, the Owner shall not, by the ser rece of such notice, become repossessed of any of the rights transferred to the Society by this assignment. roadcasting, telephony, right, in good faith, by "wired wireless," all forms of synchronism with motion pictures, and/or any method of transmitting sound; Provided, however, that the Owner shall have the right, in good faith, by The right of public performance by means of radio
 - 2. The term of this agreement shall be for a period of five (5) years from the first day of January, 1936, and expiring on the 31st day of December, 1940.
- ors to promote and carry out the objects for which it was organized, and to hold and apply all royalties, profits, benefits and advantages arising from the exploitation of the rights as-3. The Society agrees, during the term hereof, in good faith to use its best endeavsigned to it by its several members; including the Owner, to the uses and purposes as provided in its Articles of Association (to which reference is hereby made), as now in force or as hereafter amended.
- 4. The Owner hereby irrevocably, during the term hereof, authorizes, empowers and vests in the Society exclusively, the right to enforce and protect such rights of public performance under any and all copyrights, whether standing in the name of the Owner and/or others, in any and all works copyrighted by the Owner, and/or by others; to prevent the infringement thereof, to litigate, collect and receipt for damages arising from infringement, and in its sole judgment to join the Owner and/or others in whose names the copyright may stand, as parties plaintiff or defendants in suits or proceedings; to bring suit in the name of the Owner and/or in the name of the Society, or others in whose name the copyrig

Tightly Bound

could do, had this instrument not been made.

- the rights of public performance in such works, and to discontinue, compromise or refer to arbitration any such proceedings or actions, or to make any other disposition of the differences in relation to the premises. 5. The Owner hereby makes, constitutes and appoints the Society, or its success the Owner's true and lawful attorney, irrevocably during the term hereof, and in the name the Society or its successor, or in the name of the Owner, or otherwise, to do all acts, take proceedings, execute, acknowledge and deliver any and all instruments, papers, doc ments, process and pleadings that may be necessary, proper or expedient to restrain infrigements and recover damages in respect to or for the infringement or other violation
 - 6. The Owner agrees from time to time to execute, acknowledge and deliver to the Society, such assurances, powers of attorney or other authorizations or instruments as the Society may deem necessary or expedient to enable it to exercise, enjoy and enforce, in its own name or otherwise, all rights and remedies aforesaid.
- Society shall be composed of an equal number of writers and publishers respectively, and that the royalties distributed by the Board of Directors shall be divided into two (2) equal sums, and one (1) each of such sums credited respectively to and for division amongst (a) the writer members, and (b) the publisher members, in accordance with the system of distribution and classification as determined by the Classification Committee of each group, in accordance with the Articles of Association as tuey may be amended from time to time, except that the classification of the Owner within his class may be changed.

8. The Owner agrees that his classification in the Society as determined from time to Society, in case of appeal by him, shall be final, conclusive and binding upon him.

The Society shall have the right to transfer the right of review of any classification from the Board of Directors to any other agency or instrumentality that in its discretion and good judgment it deems best adapted to assuring to the Society's membership a just, fair,

equitable and accurate classification.

The Society shall have the right to adopt from time to time such systems, means methods and formulae for the establishment of a member's status in respect of classification

9. "Public Performance" Defined. The term "public performance" shall be connerted to mean vocal, instrumental and/or mechanical renditions and representations in any manner or by any method whatsoever, including transmissions by radio, broadcasting stations, transmission by telephony and/or "wired wireless"; and/or reproductions of performances and renditions by means of devices for reproducing sound recorded in synchronism or timed relation with the taking of motion pictures. as will assure a fair, just and equitable distribution of royalties among the membership.

10. "Musical Works" Defined. The phrase "musical works" shall be constrated to mean musical compositions and dramatico-musical compositions, the words and music thereof, and the respective arrangements thereof, and the selections therefrom.

11. The powers, rights, authorities and privileges by this instrument vested in the Society, are deemed to include the World, provided, however, that such grant of rights for foreign countries shall be subject to any agreements now in effect, a list of which are noted on the reverse side hereof.

12"—As per rider below

SIGNED, SEALED AND DELIVERED, on St. 12th do of April, 1936.

MERICAN SOCIETY OF COMPOSERS Que tretto Riedu. AUTHORS AND PUBLISHERS

ers for the period beginning January 1st, 1936, are or will be *—12. This rider constitutes, #12 of the foregoing contract. By accepting this contract the Society agrees that all agreementered into with members for the period beginning January I al in all respects with this agreement. tical in all respects

BLANK PAGE

EIGN AGREEMENTS AT THIS DATE IN EFFECT

(See paragraph 11 of the within agreement)

4

BLANK PAGE

Exhibit "C"

Agreement Between

Gene Buck

American Society

Composers, Authors & Publishers Thirty Rockefeller Plaza NEW YORK CITY

DATED:

June 25th, 1935.

41.

sideration of the premises and of the mutual co-

The Owner sells, assigns, transfers and sets over unto the Society for the term hereof, the entire exclusive right of public performance (as hereinafter defined), in each musical

Of which the Owner is a copyright proprietor; or

Which the Owner, alon-, or jointly, or in collaboration with others, wrote, composed, published, acquired or owned; or

In which the Owner now has any right, title, interest or control whatsoever, in whole or in part; or

Which hereafter, during the term hereof, may be written, composed, acquired, owned, published or copyrighted by the Owner, alone, jointly or in collaboration with others; or

In which the Owner may hereafter, during the term hereof, have any right, title, interest or control, whatsoever, in whole or in part.

to the Society by this instrument and shall vest in and be the absolute property of the Society for the term hereof, immediately upon the work being written, composed, acquired, owned sclusive right of public performance in every musical work shall be deemed for the term hereof, imme published or copyrighted.

The rights hereby assigned shall include:

- nusical works, whether such copyrights are in the name of the Owner and/or others, as well as the right to sue under such copyrights in the name of the Society and/or in the name of the Owner and/or in the name of the Society and/or in the name of the Owner and/or others, to the end that the Society may effectively protect and be assured of all the rights hereby assigned.
- ments or arrangements, melodies or selections forming part or parts of musical plays and dramatico-musical compositions, the Owner reserving and excepting from this assignment the right of performance of musical plays and dramatico-musical compositions in their en-The exclusive right of public performance of the separate numbers, songs, frag tirety, or any part of such plays or dramatico-musical compositions on the legitimate stage.
- "wired wireless," all forms of synchronism with motion pictures, and/or any method of transmitting sounds. Provided, however, that the Owner shall have the right, in good faith, by written notice to the Society, to restrict, limit or prohibit the public performance by radio broadcasting of works the copyright of which is vested in the Owner, and the Society agrees that all licenses by it issued shall contain a provision reserving its right to restrict or limit, or to prohibit entirely, the performance by broadcasting of any works in its repertory; and Provided further, that if the Owner notify the Society in writing to restrict, limit or prohibit the public performance of such copyrighted work, the Owner shall not, by the service of such notice, become repossessed of any of the rights transferred to the Society by this assignment.
 - The term of this agreement shall be for a period of five (5) years from the first day of January, 1936, and expiring on the 31st day of December, 1940.
- 3. The Society agrees, during the term hereof, in good faith to use its best endeavors to promate and carry out the objects for which it was organized, and to hold and apply all royalties, profits, benefits and advantages arising from the exploitation of the rights assigned to it by its several members, including the Owner, to the uses and purposes as provided in its Articles of Association (to which reference is hereby made), as now in force or as hereafter amended.
 - 4. The Owner hereby irrevocably, during the term hereof, authorizes, empowers and vests in the Society exclusively, the right to enforce and protect such rights of public performance under any and all copyrights, whether standing in the name of the Owner and/or others, in any and all works copyrighted by the Owner, and/or by others; to prevent the infringement thereof, to litigate, collect and receipt for damages arising from infringement, and in its sole judgment to join the Owner and/or others in whose names the copyright may

htly Bound

ie, and to release, compromise, or refer to arbitration any actions, in the to the same extent and to all intents and purposes as the Owner might or could do, had this instrument not been made. stand, or otherwis

- the Owner's true and lawful attorney, irrevocably during the term hereof, and in the name of the Society or its successor, or in the name of the Owner, or otherwise, to do all acts, take all proceedings, execute, acknowledge and deliver any and all instruments, papers, documents, process and pleadings that may be necessary, proper or expedient to restrain infrinthe rights of public performance in such works, and to discontinue, compromise or refer to arbitration any such proceedings or actions, or to make any other disposition of the differences in relation to the premises. The Owner hereby makes, constitutes and appoints the Society, or its successor gements and recover damages in respect to or for the infringement or other violation of
- 6. The Owner agrees from time to time to execute, acknowledge and deliver to the Society, such assurances, powers of attorney or other authorizations or instruments as the Society may deem necessary or expedient to enable it to exercise, enjoy and enforce, in its own name or otherwise, all rights and remedies aforesaid.
- 7. It is mutually agreed that during the term hereof the Board of Directors of the Society shall be composed of an equal number of writers and publishers respectively, and that the royalties distributed by the Board of Directors shall be divided into two (2) equal sums, and one (1) each of such sums credited respectively to and for division amongst (a) the writer merabers, and (b) the publisher members, in accordance with the system of distribution and classification as determined by the Classification Committee of each group, in accordance with the Articles of Association as they may be amended from time to time, except that the classification of the Owner within his class may be changed.
- 8. The Owner agrees that his classification in the Society as determined from time to time by the Classification Committee of his group and/or the Board of Directors of the Society, in case of appeal by him, shall be final, conclusive and binding upon him. The Society shall have the right to transfer the right of review of any classification

from the Board of Directors to any other agency or instrumentality that in its discretion and udgment it deems best adapted to assuring to the Society's membership a just, fair, classification. Bood

methods and formulae for the establishment of a member's status in respect of classification as will assure a fair, just and equitable distribution of royalties among the membership. equitable and accurate classification.

The Society shall have the right to adopt from time to time such systems,

- ances and renditions by means of devices for reproducing sound recorded in synchronism or timed relation with the taking of motion pictures. strued to mean vocal, instrumental and/or mechanical renditions and representations in any tions, transmission by telephony and/or "wired wireless"; and/or reproductions of perform nanner or by any method whatsoever, including transmissions by radio broadcasting "public performance" shall be 9. "Public Performance" Defined. The term
- "Musical Works" Defined. The phrase "musical works" shall be construed to mean musical compositions and dramatico-musical compositions, the words and music there-
- of, and the respective arrangements thereof, and the selections therefrom.

 11. The powers, Prights, authorities and privileges by this instrument vested in the Society, are deemed to include the World, provided, however, that such grant of rights for ffect, a list of which are noted foreign countries shall be subject to any agreements now in on the reverse side hereof.

San day of Jac 1935. SIGNED, SEALED AND DELIVERED, on this

Owne

MERICAN SOCIETY OF COMPOSER AUTHORS AND PUBLISHERS

Society

Tightly Bound

Exhibit "D"

Articles of Association

of the

American Society

of

Composers, Authors

and

Publishers



AS IN EFFECT

BLANK PAGE

AMERICAN SOCIETY of COMPOSERS, AUTHORS an PUBLISHERS

ARCENCE		
ADDELINE.		For membership, filed with
Or Suspension, of Officer XII	1	XIX
Of Member, From Committee		
meetingXVI	3 24	
From Board Meetings, of		X
Director	3 9	OI ON THE STATE OF
ABUSES		ARBITRATION
Society's purpose to establishI	Ie I	Of differences between mem-
ACCOUNTS		bers I th
Of Society, audited by Finance		AUDITS
Committee		Of books and accounts shall
And books, monthly sudits of IX	1 1 1	occur monthly
ACTIVE MEMBEDSHIP	•	
Then election to market		; ;
execute assignment to		and Competent description
Society	,	Cessors of
JENNE .		BANKBITETON
OCT. B.		
ird, in absence of		1-3 25
dnorm mnonb	9 1	9
ADMINISTRATIVE COMMITTEE		board of Appeal—Fublishers XIV 6 20
Duties of, etcXIV	7 17	BOARD OF DIRECTORS
AMENDMENTS		
To these Arricles	7	I /I I
:	20	
ANNUAL DUESIII	*	Quorum at meetingIV I
ANNUAL MEETING		Reports at annual and special
Of Society.	,,	meetingsIV 3
	*	rowers of
Board of Directors IV		Vacancy inV \s
		-
		•
	1 12	Usequalification of member by 7 10
Of TreasurerIX	12	00
PPEAL		*
And protest from classifica-	1	
tion	y.	resident presides at meetings VII I 12
	2 !	May delegate powers of officer XII
₩.	4 .	Order of business at meetings XIII
Mancia	2	royaltiesXV I 23
IPPLICATION		Ve Ve
For membershipIII 3	,	fund
For membership, intent of III	•	
For membership, false		Y ALX
statement inIII 10		VIX

BOND CONTRACTS CONTRACTS		Art. occ. rage		organia de la persona de la pe	-	
cerings of XVI 113 113 113 113 113 113 113 113 114 115 1	200 611767	-	:			1
certings of XVI 113 13 13 14 15 15 15 15 15 15 15	easurer	•	13	Board has power to makeV	"	1
certings of XIV 5 15 15 15 15 15 15 15 15 15 15 15 15 1	BOOKS			COUNSEL		
ref or Director V 6 9 D TION powers and duties by Classification XIV 6 16 peals—Writers XIV 6 16 powers and duties of XIV 1 15 powers and duties of XIV 1 15 certings of XIV 7 22 S d dissolved by 7 2 8 Divember from meet XIV 6 16 s and duties of XIV 7 22 of members XIV 7 22 cetings of XIV 1 2 24 cetings of XIV 1 2 2 Divined with Com XIV 1 2 2 The considered correct XIV 1 2 2 The correct XIV 2 2 2 The correct XIV 3 3 2 The correct XIV				Appointed by BoardVI	•	=
rer or Director V 6 9 D TION powers and duties by Classification Appeal from XIV 6 16 peals—Writers XIV 6 17 powers and duties rer, duties of etc. XIV 2 14 powers and duties xi considers all applipation XIV 3 15 it considers all applipation XIV 3 15 powers and duties of XIV 3 14 powers and duties of XIV 3 14 certings of XIV 3 24 of members XIV 3 24 of members XIV 2 12 S S COMMITTEE uties of XIV 4 15 cettings of XIV 4 15 of members			13	General, term indeterminate VI	"	=
powers and duties Nembers, heirs of DECLINQUENCY DEPOSITIARIES Of Society, selected by Board DELINQUENCY In payment of dues DELINQUENCY In payment of dues Of Society, selected by Board Of Society, non-salaried Of Society, non-sa	CHARGES			Duties and powers ofXI	-	*
Proposers and duties by Classification by Classification by Classification Composers and duties c, duties of etc. XIV 6 16	Against Officer or DirectorV	9	6	DECEASED		
by Classification XIV 6 16 DELINQUENCY In payment of dues peals—Writers. XIV 6 17 DEPOSITARIES Of Society, selected by Board DISQUALIFICATION Member of Board Absence of Member of Board Of Society, non-salaried DISTRIBUTION Of royalties DISTRIBUTION Of royalties DUES Annual DURATION Of Members XVI 124 DUTIES AND POWERS Of Classification Committee Of Complaint Committee Of Complain	CLASSIFICATION			Composers and authors, succes-		
by Classification by Classification XIV 6 16 DELINQUENCY In payment of dues peals—Writers XIV 6 15 DEPOSITARIES Of Society, selected by Board Of Complete Society, selected by Board Of Society, selected by Board Of Complete Society, selected by Board Of Society, selecte	Committee, powers and duties			ors of	-	•
by Classification by Classification XIV 6 16 DEDINQUENCY appeal from XIV 6 16 DEPOSITARIES Of Society, selected by Board DISQUALIFICATION Member of Board DISQUALIFICATION Member of Board Absence of Member of Board, term of Member of Board,	viX	9.	16	Members, heirs of XX	. "	36.
appeal from XIV 6 16 In Payment of dues peals—Writers XIV 6 20 Peals—Writers XIV 6 20 DISQUALIFICATION Rember of Board DIRECTOR Absence of Member of Board, term of DIRECTOR Absence of Member of Board, term of DIRECTOR Absence of Member of Board, term of Of Society, selected by Board DIRECTOR Absence of Member of Board, term of Of Member of Board, term of Of Society, non-salaried Of Society Of Complaint Committee Of Administrative Committee Of Administrative Committee Of Complaint Committee Of Complaint Committee Of Finance Committee Of Membership Committee Of Coursel Of Complaint Committee Of Finance Committee Of Officer, in absence or suspension Of Officer, in absence or suspension To membership by maiorier Divice of XIV 15 Of Officer, in absence or suspension Of Coursel Of Complaint Committee Of Officer, in absence or suspension Of Officer, in absence or suspension Of Officer, in absence or suspension Of Officer, in absence or suspension of Treasurer To membership by maiorier Of Officer, in absence or suspension of Treasurer Officers of Treasurer	Of members, by Classification					
peals—Writers XIV 6 16 16 In payment of dues peals—Writers XIV 6 20 Of Society, selected by Board Or Society, society by Board Or Society, selected by Board	Committee XIV	9	91			
peals—Writers XIV 6 17 DEPOSITARIES Of Society, selected by Board owers and duties re, duties of etc. XIV 2 14 Member of Board owers and duties powers, duties of XIV 4 15 Absence of powers, duties of XIV 1 14 Member of Board, term of powers, duties of XIV 4 15 Absence of considers all appli- powers and duties of XIV 7 22 Office s and duties of XIV 7 22 Of Society, non-salaried S d dissolved by 7 22 Of royalties S and duties of XIV 7 22 Of Society, non-salaried Of members XIV 7 22 Of Society of members XIV 5 15 Of Society rs and duties of XVI 5 14 DURATION of members XIV 5 15 Of Society of members XIV 6 16 Office, non-salaried NXI 7 24 Of Complaint Committee Dofficent, is ex-officio Officential Committee Dofficer, in absence or suspenses, filed with Com- NXI 5 Of Pressident XVI 7 24 Of Counsel Officer, in absence or suspensed and the supprise of XIV 6 15 Officer, in absence or suspenses, filed with Com- son, may be delegated and the supprise of the committee Dofficer, in absence or suspenses, filed with Com- nuitee XIV 7 15 Officer, in absence or suspensed and the complaint Committee Dofficer, in absence or suspenses, filed with Com- nuitee XIV 7 15 Officer, in absence or suspensed and the complaint Committee Dofficer, in absence or suspenses, filed with Com- nuitee XIV 7 15 Officer, in absence or suspensed and the complaint Committee Dofficer, in absence or suspenses, filed with Com- Officer, in absence or suspensed and the committee Dofficer, in absence or suspenses, filed with Com- Officer, in absence or suspensed and the committee Dofficer, in absence or suspensed and the	Protest and appeal fromXIV	9	91	In payment of duesIII	14	+
peals—Pub—XIV 6 20 DISQUALIFICATION Re, duties of etc. XIV 2 14 Member of Board DIRECTOR Absence of Member of Board, term of Member of Noryalties DISTRIBUTION Of Society, non-salaried Of Society, non-salaried Of Members Members XIV Members of XVI Members of XVI Members of Committee Of Counsel Of Counsel Of Counsel Of Counsel Of Membership Committee Of Counsel Of Membership Committee Of Membership	Board of Appeals-Writers XIV	9	17	DEPOSITABIES		
Provers and duties of etc. XIV 2 14 Member of Board Overs and duties of XIV 1 14 Member of Board Overs, duties of XIV 1 14 Member of Board term of Office Stand duties of XIV 1 15 Member of Board term of Office Stand duties of XIV 1 19 Member of Society, non-salaried Office Stand duties of XIV 1 19 Member of Now constituted Office Stand duties of XIV 1 19 Member of Now constituted Office Stand duties of XIV 1 19 Member of Now Constitute Office Stand duties of XIV 1 19 Member of Now Constitute Office Stand duties of XIV 1 19 Member of Now Constitute Office Stand duties of XIV 1 19 Member of Now Constitute Office Stand duties of XIV 1 19 Membership Committee Offi	Board of Appeals-Pub-					•
PulsQUALIFICATION Te, duties of etc. XIV 2 14 Ters, duties of .XIV 1 14 DIRECTOR Absence of Member of Board, term of Glice Powers and duties The considers all applimate and duties of .XIV 2 22 The considers all applimate and duties of .XIV 3 22 The considers and duties of .XIV 3 24 DISTRIBUTION Of royalties Sand duties of .XIV 3 24 DISTRIBUTION Of royalties Of Society, non-salaried Sand duties of .XIV 3 24 DUES Annual DURATION Of Administrative Committee Of Classification Committee Of Classification Committee Of Counsel Of Counsel Of Relief Committee Of Vice-President To manhership by masion	:	9	20	Donald (•
owers and duties owers and duties owers and duties ers, duties of XIV 1 4 4 5 Absence of Absence	COMMITTEE					
powers and duties Try Try Try Try Try Try Try Tr	Administrative, duties of etc. XIV	**	7	Member of BoardV	9	2
powers, duties of XIV 1 14 Member of Board, term of the considers all appliant the considers all appliant and duties of XIV 2 2 DIRECTORS Attendance fee and duties of XIV 7 22 DISTRIBUTION Of society, non-salaried Stand duties of XIV 7 22 DISTRIBUTION Of royalties DUES Annual Annual Of Society on Society on Society of	Complaint, powers and duties					
powers, duties of XIV 1 14 Member of Board, term of considers all applimate and duties and duties of XIV 7 22 DISTRIBUTION Of royalties of XVI 7 22 Annual DISTRIBUTION Of member from meet. XVI 3 24 DURATION Of Complaint Committee of Committees of XVI 2 24 DURATION Of Complaint Committee of Committees of XVI 2 24 DUTIES AND POWERS Of Committee of Committees of XVI 2 24 Of Membership Committee of Committee	VIX yo	+	15	Absence of V		•
powers, duties III 3 Permoval or suspension of it considers all appliant of the considers all appliant of the considers and duties of XIV 7 22 DISTRIBUTION Of royalties S and duties of XIV 7 22 DISTRIBUTION Of royalties S and duties of XVI 3 24 DURATION Of committee of Complaint Committee of Complaint Committee of Complaint Committee of Committees of XVI 24 DUTIES AND POWERS Of Complaint Committee of Committees of XVI 24 DUTIES AND POWERS Of Complaint Committee of Committees of XVI 24 DUTIES AND POWERS Of Complaint Committee of Committees of XVI 24 DUTIES AND POWERS Of Complaint Committee of Committees of Committee of	Finance, powers, duties ofXIV	-	7	Member of Board term of	•	•
it considers all appli- powers and duties of XVI powers powers powers and duties powers po	Membership, powers, duties			office 7		¥
it considers all applible to considers all applible to powers and duties of XIV 6 16 Board of, how constitute of Sand duties of XIV 7 22 Of Society, non-salaried Stember from meet. XVI 3 DUSTRIBUTION Of royalties of XVI 3 DURATION Of Society Of Society Of Society Of Complaint Committee of XVI 24 Of Classification Committee of XVI 24 Of Classification Committee Of Counsel	VIX	m	15	Removal or suspension of V		•
powers and duties powers and duties powers and duties rand duties of XIV 7 22 Of Society, non-salaried Sand duties of XIV 7 22 Of Society, non-salaried Sand duties of XIV 7 22 Of Society, non-salaried Sand duties of XIV 7 22 Of Society, non-salaried Sand duties of XVI 3 24 DURATION of members XVI 3 24 DURATION of members XVI 2 24 Of Administrative Committee Ectings of XVI 2 24 Of Capsification Committee Of Complaint Committ	Membership, it considers all appli-				,	•
y powers and duties y powers and duties y 2 8	cationsIII	60	4	DIRECTORS	10	
s and duties of XIV 7 22 Of Society, non-salaried S Of Society on salaried S Of Society on salaried S Of Gissolved by Of Coyalties Of Members Of Members Of Society Of Complaint Committee Of Complaint Committee Of Classification Committee Of Classification Committee Of Counsel Of Counse	Classification, powers and duties			Attendance fee	•	•
S and duties of .XIV 7 22 Of Society, non-salaried S of dissolved by Of royalties Of royalties Of royalties Of member from meet. XVI 3 24 DURATION Of Society Of Society Of Society Of Complex Committee Of Complex Committee Of Complex Committee Of Complex Seneral Of Committee Of Secretary Of Officer, in absence or sion, may be delegated Of Vice-President Of Vice-President Of Committee Of Vice-President Of Vice-President Of Committee Of Vice-President Of Committee Of Vice-President Of Vice-President Of Committee Of Vice-President Of Committee Of Vice-President Of Committee Of Vice-President Of Vice-President Of Committee Of Vice-President Of Of Officer Of Vice-President Of Officer Of Vice-President Of Officer O	VIXXIV	9	91	Board of, how constitutedIV	-	9
d dissolved by DUES DUES Annual Annual DURATION of members. XIV 24 of Members of XVI 24 DUTIES AND POWERS Of Committee Of Complaint Committee Of Complaint Committee Of Committee Of Counsel Of Finance Committee Of Membership Committee Of Membership Committee Of Relief Committee Of Relief Committee Of Relief Committee Of Officer, in absence or su sion, may be delegated Of Vice-President To membership by majorit	Relief, powers and duties of XIV	1	22	Of Society, non-salariedV		00
d dissolved by v 2 8 DUES tember from meet- xXVI 3 24 DURATION of members. XIV 3 15 Of Society rs and duties of XVI 24 Of Complaint Committee XXVI 2 24 Of Complaint Committee XXVI 2 24 Of Complaint Committee of Counsel Of Counsel Of Membership Committee Of Membership Committee Of Membership Committee Of Relief Committee Of Relief Committee of Membership Committee of Membership Committee Of Relief Committee of Membership Committee Of Relief Committee Of Officer, in absence or su sion, may be delegated Of Vice-President To membership, by majority	COMMITTEES			DISTRIBITION		
tember from meet- Annual Anstrative, consist of members XVI 3 24 DURATION of members XIV 5 15 of Society Of Society Of Complaint Committee Sident, is ex-officio Of Counsel Of C	Appointed and dissolved by				•	;
nistrative, consist Of members XVI 3 24 DURATION of members XIV 5 15 Of Society Treating of XVI 24 Of Complaint Committee Of Complaint Committe	BoardV	**	00	yardes	-	23
of members. XIV 3 24 Of Society of members. XIV 24 Of Society rs and duties of XVI 24 Eetings of XVI 2 24 Of Complaint Committee Of Complaint Committee Of Complaint Committee Of Classification Committee Of Counsel Of Finance Committee Of Membership Committee Of Officer, in absence or su sion, may be delegated Of Vice-President To membership by majorit	Absence of member from meet-			101		. •
of members. XIV 5 15 Of Society rs and duties of XVI 24 DUTHES AND POWERS XVI 24 Of Administrative Committee XVI 24 Of Complaint Committee XIV 424 Of Classification Committee XIV 124 Of Classification Committee Of Counsel Of Counsel Of Membership Committee Of Membership Committee Of Membership Committee Of Melief Committee Of Melief Committee Of Melief Committee Of Officer, in absence or su sion, may be delegated Of Vice-President To membership by majorite	INX jo Sui	~	77			•
of members. XIV 5 15 Of Society rs and duties of XVI 24 DUTIES AND POWERS XVI 24 Of Complaint Committee. XVI 24 Of Complaint Committee. XIV 14 Of Complaint Committee. XIV 14 Of Committees, general Of Counsel Of Counsel Of Counsel Of Counsel Of Committee	Except Administrative, consist					
rs and duties of XVI 1 24 Of Administrative Committe XVI 2 24 Of Complaint Committee Of Classification Committee XIV 4 24 Of Classification Committee Of Classification Committee Of Counsel XVII 1 12 Of Finance Committee Of Membership Committee Of Membership Committee Of Membership Committee Of Relief Committee Of Secretary Of Officer, in absence or su sion, may be delegated Of Vice-President To mittee XIV 4 15 Of Treasurer Of Vice-President To membership by majority	exclusively of membersXIV	S	15	Of SocietyII	٥	*
eetings of XVI 2 24 eetings of XVI 4 24 XIV 14 sident, is ex-officio VII 1 12 XVII 24 XVII 24 XVII 24 XVII 24 XVII 24 XVII 1 12 XVII 24 XVII 24 XVII 24 XVII 24 III 1 2 EI Georgand concess III 1 2 EI	General powers and duties of XVI		77	DUTIES AND POWERS		.,
eetings of XVI 4 24 XIV 14 24 Sident, is ex-officio VII 1 12 XVII 24 XVII 24 XVII 24 XIV 5 15 COMMITTEE Luties of XIV 4 15 ers, filed with Committee III 1 2 El	More of Action o		7	Of Administrative Committee XIV	*	1
sident, is ex-officio Sident, is ex-officio WII 1 12 XVII 24 XVII 24 XVII 24 XVII 24 XIV 5 15 COMMITTEE Luties of XIV 4 15 mittee XIV 4 15 Mittee XIV 4 15 Mittee XIV 4 15	Missing of mentions of VVI		*		+	15
sident, is ex-officio VII 1 12 XVII 24 XVII 24 XVII 24 XVII 24 XIV 5 15 COMMITTEE Iuties of XIV 4 15 ers, filed with Committee XIV 4 15 Mittee XIV 1 2 El	Standing XIV	+	1:		9	16
VII 1 12 XVII 24 XVII 24 XIV 5 15 COMMITTEE Luties of XIV 4 15 ers, filed with Committee XIV 4 15 Mittee XIV 4 15 Mittee XIV 4 15	Standing President is ex-officio		*			#
COMMITTEE Sommittee Mittee	member VII		13		-	*
COMMITTEE Juties of XIV 4 15 ers, filed with Committee XIV 4 15 mittee XIV 4 15 mittee XIV 2 EI	Special				-	#
COMMITTEE luties ofXIV 4 15 ers, filed with CommitteeXIV 4 15 mitteeXIV 4 15	Terms of XIV		12			15
ers, filed with Committee XIV 4 15 mittee XIV 4 15 III 1 2 El	COMPLAINT COMMITTEE	,			- 1	2
ers, filed with Committee XIV + 15	Powers and duties of XIV				۲,	23
mitteeXIV 4 15			•	Of Secretary	•	13
nmitteeXIV 4 15	COMPLAINTS			Of Officer, in absence or suspen-		
deceased energy	Against memoers, nied with Com-			Of Tressurer TY	•	::
deceased energy	imittee	•	57	Of Vice-President		: :
deceased ences.					•	
		-	61	ELECTION		
	And authors, deceased, succes-		•	to membership, by majority		
		•	•		•	•
Page paterances are to the principal personal and are to this solities	rage references are to the original ar	rticle	1 25 Dr	and and and the thirt sehible	-	

.

Subject Art. Sec. Pay	c.Pa	2	Subject Art. Sec. Pag	2.23	2
ELECTIONS		1	MANAGEMENT		1
Annual MeetingIV	-	•	Of Society, vested in BoardV		~
1.15		~,	MEETING		•
Under Control of BoardV			Annual, elect DirectorsIV	-	•
EXPULSION		•	Of Board of Directors, quorum IV	-	•
For failure to qualifyIII	==	•	MEETINGS		
For non-payment of dues IIII	•	+	Annual, of Board of Directors IV	•	•
Of memore, for falle state-	:		board of Directors, monthly,		•
Or suspension of membershin XX		^ ;	General of Society WVIII	н.	• ;
Or suspension, of officer		? =	Notices of given by Secretary X	•	† :
a a	•		Of Board, order of business, XIII	• •	? :
			Of committees XVI		1 4
or memoer, to quanty	:	•	Special, of SocietyXVIII	-	4
		•	MEMBER		
H	2	S	Examination of, by BoardV	1	2
FOREIGN SOCIETIES			Failure to qualifyIII	=	~
Agreement withI	4		False statement in application III	2	
QVD.			List of works ofIII	1	+
Reserve, amount allotted to XV	9	71	Must execute assignment to		
Parime			Society	•	+
FONDS			Non-Participating, transferred		
Kellet, sums received as dues,			to Active ClassIII	•	8
Of Society Board controlsV		n 00	Members, deceased, succes-		•
			Honorary do not hold office	•	•
			or vote	•	•
Of SocietyXVIII	-	#	3		•
HEIRS	1		MEMBERSHIP		
Of Deceased MembersXX		92	Application forIII	•	4
HONOBADY MEMBERS			Application for, intent of III	+	*
Do not hold office or water III			Application for, filed with		:
		•	Picinia lan dance		? ;
MEMBER-			Floring of he majority unte		7
SHIP dilks	-		of Roard		•
4		٠	Expulsion, or suspension of XX	•	K
Of memberXX	•	35	Honorary III	-	•
INVESTMENTS			Non-ParticipatingIII	-	
Of Society, Board controlsV	*	•	PoethumousXX	•	8
LEGAL MATTERS			Roll, to be kept by Member-		
Supervised by CounselXI	-	#	ship CommitteeIII	•	~
LEGAL PROCEEDINGS			MEMBERSHIP COMMITTEE	,	
Maintained by BoardV	**	1	It considers all applications III	•	+
LEGISLATION			Powers and duties ofXIV	•	13
ForeignI	2	-	MINUTES		
Reforms in Copyright LawI	•	-	Of meetings, of committees XVI	•	a
LICENSES			MOTIONS		
Granted by Society		-	ă		1
LIST OF WORKS			to writing Avilli	-	3
By memberIII	1	•		•	
By Membership Committee III	•	2	MembershipIII	-	•
· Page references are to the original articles as printed and not to this exhibit.	ricle	1 18 pr	nted and not to this exhibit.	47	_
			THE RESERVE OF THE PROPERTY OF		N. S.

		William Property and American State of the Control	
NON-PARTICIPATING MEMBER	•	PRESIDENT	
Election to Active Class III		Annual Report ofVII	-
NON-PARTICIPATING MEMBERS		Appoints Administrative Com-	
Do not were hold office etc . III		mitteeXIV	•
Regulations governing	-	Appoints Complaint Commit-	
		ATX	+
NOTICE TO THE PARTY OF THE PART		Appoints Finance Committee A1v	1
Or Doard Meetings, two days	,	Appoints Membership Commit-	
bieviousi	•	Arrian P.I. Committee VIV	- 1
NOTICES		Appoint sener Committee	•
Of meetings, given by Secre-		Appoints special committee	
ХХ	1	T. Chief Presenting Office VII	•
meetings,		Is Fx-Officio Member of stand-	
of BoardIV		ine committee	•
To membersXIX	1 35	Mer ded as second in commit	
DBIECTS		the account shoons of mem-	
Of organization	-	Per XVI	
		Powers and duties ofVII	
Verse is		6	7
vacancy in		PROPERTY	
OFFICER	14	Or society, Board controls	<
	2 . 11	Keal and personal, Society's right	1
Kemoval or suspension ofV	2		
Suspension or absence ofXII	7	PROTECTION	3
OFFICERS		Of members, under Copyright	-
Election ofVI		Law	PI
Of SocietyVI		PROTECT	e de la constante de la consta
OFFICES		And some from desiffer-	****
Of Society, in New York City I		tion XIV	9
ORDER OF BUSINESS	**		
Director's meetingsXIII	,		
	de la	MembershipIII	~
Society protects membership		PURPOSES	
against		Of organization	
		Orroni II	
SHIP	**	Meeting	-
•		,	-
Of Board of Directors	-	Of committeesXVI	-
POWFES AND DITTIES OF		RECORDS	
Administrative Committee XIV		Of Committee meetingsXVI	•
Classification Committee XIV	9		
Complaint Committee XIV	51 +	R	
CounselXI	1	5	
Committees, generalXVI	12 2	1	•
Finance CommitteeXIV	11 .	RELIEF COMMITTEE	
Membership CommitteeXIV	3 15	11	1
Officer, in absence or suspension,		President appointsXIV	-
D	7	RELIEF FUND	
Dalial Committee VIV	- 1	Sums	
Secretary	::	6 to \	
Treasurer		REMOV	
dent			·
		The same of the sa	

REPORT Annual, of President		A TANAMATANA A TAN	100	2
Annual, of PresidentVII		SUSPENSION		
TIME TO TESTICAL VII		T. C.		
	7.	for non-payment of dues III	**	
Annual, of TreasurerIX	I 12	Of Director or Officer		
Of Board of Directors, at annual		Or absence of Officer VIII	•	^
111		IIV	-	1
and special meetingsIv	3 . 7	Or expulsion, of Membership XX		25
	/	Or expulsion of Officer VI		
REPRESENTATIVE	/		•	
		TERM		
Or corporate or partnership				
memberIII 1	12 51	Of CommitteesXIV		IF
		Of Society		
		T		
RESERVE FUND		Of Office, of DirectorIV	-	9
Amount allotted to XV	*h 44			1
	110 23	TRANSFER		
Creation ofXV	2 23	Of Non Danier		
		Aen		
DESCRIPTIONS AND MORTONS		to Active ClassIII	00	-
TOTAL THE WILLIAMS				•
Must be reduced to writing XVIII	3 25	IKEASUKEK		
	,	Annual report of IX		. 5
ROLL OF MEMBERS		Rond of		
		YI	-	3
by Membership Committee III	9	Duties and powers ofIX	-	12
		TDIAT		
ROYALTIES		IKIAL		
30 400		Of member, by Board	œ	5
5	1 23	Of member for false states	,	7
Distribution ofXV	1 23	or meaning, for talse statement		
>		in applicationIII	10	v
The state of the s	. 1			
Doard	1	UNCLAIMED ROYALTIES XV	3	23
UnclaimedXV	3 23	TIMEATE DE LONGES		
		CINTAIN FRACTICES		
DITTE AND DECITATIONS		Society's purpose to abolish I	Ie	-
			10	•
Governing procedure of Board IV	9 1	VACANCY		
		Diseases		-
SFAL OF SOCIETY		T. D. Lifetions	+	0
,		In Board of Directors, how		
Custody of SecretaryX	I 13	filledIV	-	9
		In any office		1
SECRETARY		Office of the second land	+	
	**	-		
, and a second	2	suspensionVI	v	II
Gives notices of meeting of	a. '	In committee, account absence		
BoardIV 2	9	of member	,	1
		:	~	7
		VICE-PRESIDENT		
designationsIII 12	S			
		Fowers and duties ofVIII		12
SPECIAL MEETINGS		VOTING		
Board of Directors IV 3				
		ns, resolutions, by		
of society	24	BoardIV		9
		One vote to each firm, etc III	13	w
STANDING COMMITTEES XIV	14	- Canada		•
		WORKS		
SUCCESSORS		By member, list ofIII	1	4
Of deceased romocease and				-
		WRITERS		
authorsIII	~			-
	,	IntellinetshipIII	_	M

Article I

We constitute ourselves a voluntary association under the name of "American Society of Composers, Authors and Publishers," for the following purposes, to-wit: SECTION I.

To protect composers, authors and publishers of musical works against piracies of any 3

9

To promote reforms in the law respecting literary property;

To Procure uniformity and certainty in the law respecting literary property in all coun-(3) tries;

To facilitate the administration of the copyright laws for the protection of composers, authors and publishers of musical works; P

To abolish abuses and unfair practices and methods in connection with the reproduction of musical works; છ

To promote and foster by all lawful means the interest of composers, authors and publishers of musical works; ε

To grant licenses and collect royalties for the public representation of the works of its members by instrumentalists, singers, mechanical instruments, radio broadcasting stations, or any kind of combination of singers, instrumentalists and mechanical instruments, and to allot and dis-(8)

its members and others, and to represent its members in controversies, actions and proceedings, involving the right of public performance of any work of any member, or the question of authorship To adjust and arbitrate differences and controversies between its members and between work of any member; in any

To promote friendly intercourse and united action among composers, authors, publishers Ξ

and producers of musical works;

(j) To acquire, own and sell real and personal property, and to accumulate and maintain a reserve fund to be used in carrying out any of the objects of the society.

(k) To enter into agreements with other similar associations in foreign countries, providing

for the reciprocal protection of the rights of the members of each society.

(1) To do any and all other acts or things which may be found necessary or convenient in carrying out any of the objects of the Society or in protecting or furthering its interests or the interests of its members.

Section 2. The principal office of the Society is to be located in the City of New York.

Article II

The duration of the Society shall be ninety-nine years.

Article III

Membership

The membership of this Society shall be divided into five classes, as follows: SECTION I.

Music Publishers

Any person, partnership, firm or corporation regularly engaged for a period of not less than one year in the music publishing business shall be eligible to membership in this class. Any composer and/or author of musical works who regularly practices the profession of writing music and/or the text or lyrics of musical works, and who shall have had not less than five works Composers and Author

Non-Participating

of his composition or writing regularly published, shall be eligible to membership in this class.

Each person, partnership, firm or corporation hereafter elected to membership shall be first assigned to this Class, and shall remain therein for a period not exceeding one year from election. At the termination of the said period the Board of Directors shall, by two-thirds vote of those preperiod, or shall be transferred to the appropriate one of the two preceding classes, or be discontinued. No such membership shall, however, be discontinued except after due notice to the member and an opportunity afforded him to appear before the Board of Directors and show cause why the same should not be discontinued. sent, determine whether the membership in this class shall continue, and if so for what additional

Members in this Class shall not be entitled to vote, hold office, or share in any of the rights, benefits, privileges, royalties or emoluments of the two preceding dasses of members.

Honorary Membership

Any person, firm or corpóration which has rendered to the art or industry of music, or to this Society, a notable or conspicuous service, may be eligible in this Class and elected thereto by unanfmous vote of the Board of Directors. All nominations in respect of this class of membership shall, however, be tabled at the meeting first presented, and may not be acted upon until or after the next eding meeting.

Members in this Class shall not be entitled to vote, hold office, or share in any of the rights, benefits, privileges, royalties or emoluments of the first two Classes hereinabove described.

Successors of Deceased Composers and Authors

Any person who has acquired, by will or under any law, the right, title and interest of a deceased composer or author in any musical works, including the right of public performance thereof, may be elected to membership under this Class. Members of this Class shall not have voting power or be eligible to office.

The annual dues, payable on the first day of January in each year, shall be as SECTION 2.

			nnual
\$50.00	10.00	10.00	pro-rata of a
Music Publishers \$50.00	Composers and Authors	Successors to Deceased Composers and Authors 10.00.	Upon election to either of the above Classes the member shall pay the pro-rata of annual
			Upon

rate to the first day of the following January, and thereafter at the annual rate of his Class. None Non-Participating

Honorary ...

None

Unless otherwise directed by the Board of Directors, all sums received in payment of dues shall be for the use and benefit of the Relief Fund of the Society. Upon the default in excess of ninety days in payment of any dues, after notice thereof to the

member, the Board of Directors may suspend or expel the delinquent member.

Application for Membership

Section 3. Shall be made in writing upon a printed blank form prepared by the Committee on Membership. Every application shall be signed by an individual applicant in person, by a firm, through a co-partner, by an association or corporation through a duly authorized officer. The application shall be submitted to the Membership Committee and shall be accompanied by proof of eligibility to membership.

Intent of Application

perform, and abide by the Articles of Association, and all requirements herein contained; and to conform to, duly perform and abide by, all by-laws, rules, regulations or resolutions, whether expressed in the Articles of Association or otherwise, which may be in force at the time of such application or may thereafter from time to time be adopted, and to all amendments of and additions to the Articles of Association, by-laws, rules or regulations which after the time of such applications to the Articles of Association, by-laws, rules or regulations which after the time of such applicants. The signing and presentation of such an application to the Membership Commitplication may from time to time be adopted. SECTION 4.

A majority vote of all members of the Board of Directors shall be necessary to elect an applicant to membership. SECTION 5.

Obligation of Applicant

SECTION 6. Each member shall, upon election to Active Membership, execute an assignment in such form as the Board of Directors shall approve, vesting in the Society the exclusive right to license the non-dramatic public performance of the members works for the period of any then existing agreement between the Society and its members.

Members' List of Works

Secrion 7. The applicant on being elected to membership shall, upon request, state upon a regular printed form furnished by the Secretary, a brief title, description and the date of copy-

right, of each work published or written by him. Each member shall upon the publication of any work of which he is the author, composer or publisher, furnish to the Secretary, a brief title, desription, and the date of copyright thereof.

Transfer of Non-Participating Member

Section 8. 'Upon the transfer of a non-participating member to either "Music Publisher" or "Composers and Authors" Class, and before the transfer shall be deemed as in effect, the member shall execute and deliver to the Society an assignment of non-dramatic public performing rights, in the form submitted by the Society, all of which rights so vested in the Society shall be known as the "performing rights" and are to be held and enjoyed by the Society from the date of election to expiration of any then existing agreement between the Society and its members.

Membership Roll

It shall be the duty of the Membership Committee to prepare and keep a mem bership roll or list of members of the Society. SECTION 9.

False Representation by Member

misstatement upon a material point has been made to it by a member, upon his application either for membership or reinstatement, it shall report the case to the Board of Directors, who by a two-thirds vote of all the members of the Board may expel the member after a trial as in these articles Whenever it shall appear to a majority of the Membership Committee that SECTION 10.

SECTION II. If within six weeks after the transfer of a "Non-Participating" member to either "Music Publishers" or "Composers and Authors" Class, the members shall have failed to execute and deliver to the Society the assignment as provided by Section 8 preceding, and to comply with all other rules, regulations and requirements of the Society, the membership shall be discontinued.

Voting

SECTION 12. No co-partnership, firm, association or corporation shall have more than one vote or representative in the Society. In case of a co-partnership, a member thereof, and in case of an association or corporation, an officer thereof, shall be duly designated as its representative. Such designation shall be filed with the Secretary of the Society.

Management Board of Directors Elections Irticle IV

SECTION I. The government of the Society shall be vested in, and its affairs shall be managed by a Board of twenty-four directors. They shall be elected at each annual meeting of the Board of Directors by a two-thirds vote of the entire Board and shall continue until their successors are elected. They shall be divided into three divisions of equal number. At the first election hereafter held one division, consisting of four publishers, two authors and two composers, shall be elected for one year; one division similarly constituted for two years and one division similarly constituted for three years; but when the term of each division expires their successors shall be

elected by the Board of Directors for three years.

At all times six of the members of the Board shall be composers, six authors and twelve publishers. Any vacancy in the Board shall be filled from the class of members in which the vacancy occurred and shall by nomination of the remaining Board members of such class, be elected by a two thirds vote of the directors present.

Thirteen members shall be necessary to constitute a quorum, and the affirmative vote of two-thirds of such quorum shall be required and shall be sufficient to adopt or pass any motion or resolution authorizing or directing any act or thing within the power of the Board. Any number less than a quorum may meet and adjourn from time to time until a quorum be present.

The Board may determine the rules of its procedure and make any and all regulations neces-

vants of the Society.

Any former President of the American Society of Composers, Authors and Publishers shall be ex-officio member of the Board of Directors, without the right to vote. Adopted—March 25, 1931.

August and September, and shall meet at least once in each month except in the months of July, August and September, and shall hold an annual meeting in the month of January of each year. Notices of regular or special meetings of the Board of Directors shall be given by mail by the Secretary to each director at his less known post office address at least two days previous to the time fixed for the meeting. Special meetings of the Board of Directors may be called by the President or Secretary, and shall be called by either of them on written request of any seven directors.

port of Board at Meetings

mitted at the annual meeting of the Society, and shall report at such meeting, or at any special meeting of the Society, any business which in its judgment requires the action of the Society. SECTION 3. The Board of Directors shall keep a record of its proceedings which shall be sub

Powers of the Board of Directors Irticle V

Section 1. The Board of Directors shall have charge of and supervision over the general management of the business of the Society, and in addition to the powers by these articles expressly conferred upon it, may exercise all such powers and do all such acts and things as may be exercised or done by the Society.

Contracts

Secrion 2. Without prejudice to the general powers conferred by the last preceding section and the other powers conferred by these articles, it is hereby expressly declared that the Board of Directors shall have the following powers, that is to say:

To make contracts or authorize contracts to be made by officers of the Society or by any of the committees provided for by these articles; to fix the rate, time and manner of payment of royalties for the performances of all works registered with the Society; to collect such royalties; to maintain all legal proceedings necessary to enforce payment of such royalties and compromise claims for damages and penalties for unlawfull performances; to distribute among the members the royalties collected in the proportionate shares provided for in the scheme of allotment of royalties prescribed in these articles; to enforce the fulfillment of all contracts, both on the part of the members of the Society and third parties, that may have been made by the Society; to authorize the prosecution and defense of any matter, action or proceeding within the scope of the Society, or affecting its interests or involving the rights of public performance of any work of any member or the question of authorship in any work of any member.

To purchase or otherwise acquire for the Society any property, rights and privileges which the Society is authorized to acquire, at such prices and on such terms and conditions, and for such congretations, as it thinks fit.

ers, managers, subordinates, assistants, clerks, agents and servants, permanently or temporarily, as it may from time to time think fit, and to determine their duties and fix and from time to time change their salaries or emoluments, and to require security in such instances and in such amounts To appoint and at its discretion remove or suspend, such assistant secretaries, assistant treasuras it may think fit.

To confer by resolution upon any committee or officer of the Society the right to choose, remove or suspend such subordinate officers, agents or servants.

To determine who shall be authorized to sign, on the Society's behalf, receipts, endorsements checks, releases, contracts and documents.

From time to time to provide for the management of the affairs of the Society in such manner as it thinks fit, and in particular from time to time to delegate any of the powers of the Board of Directors to any Committees, officers or agents, and to appoint any persons to be the agents of the Society, with such powers (including the power to sub-delegate) and upon such terms as may be thought fit.

To appoint and dissolve all committees; to define, alter and regulate the jurisdiction and exercise original and supervisory jurisdiction over any and all subjects and matters referred to said committees; it may direct and control their actions or proceedings at any stage thereof, and shall try all charges against members and punish such as may be found guilty.

The Board of Directors shall have the power to make such regulations and to take such action

not inconsistent with the articles of association and the by-laws, as it may deem advisable for the

protection of the property and for the general objects of the Society. It shall adopt a seal of the Society.

longing to the Society. It shall determine the manner and form of their investment and the deposdisposition of all fun 6 The Board of Directors shall have the control over itaries of such funds.

Salaries of Directors

SECTION 3. Directors as such shall not receive any salaries for their services except that the sum of \$240 may be appropriated out of the treasury at each meeting of the Board of Directors for distribution as attendance fees among such directors of the 24 members of the Board as shall be present within five minutes after the meeting has been called to order.

In case a director shall be absent from three consecutive meetings of the Board of Directors, unless he shall have been by the President excused from attendance, his office as a Director, and any other office held, shall be declared vacant, and at the next regular meeting of the Board of

Directors a successor shall be elected.

Section 4. That no resolution increasing salaries or granting emoluments to officers and employees receiving \$5,000.00 yearly or more, or making unusual or extraordinary expenditure or financial committment may be passed by the Board of Directors until such resolution is first proposed at a regular or special meeting of the Board of Directors and laid upon the table for final action at its next succeeding meeting. Notice of the meeting at which such resolution is to be voted upon granting the same must be given to the members of the Board in writing at least five

in advance. Adopted—March 28th, 1929.

Vacancy in Board of Directors

SECTION 5. In case of the death, removal or resignation of a director, or of any vacancy in the Board of Directors, such vacancy shall be filled by the election of a director belonging to the same class of directors as the member of the Board whose place is to be filled, for the unexpired term, at the next regular meeting, in the manner provided for the election of directors by the Board of Directors at annual meetings.

Removal or Suspension of Director or Officer.

Section 6. In case, at any regular or special meeting of the Board of Directors, two-thirds of those present shall be of the opinion that sufficient cause exists for the removal of any director or officer from such office, and that his removal is for the best interest of the Society, a special meeting of the Board of Directors shall be called, upon three days' written notice to each of the directors, specifying the charges against the director or officer against whom such are directed, and a copy of such charges shall be served upon the director or officer so charged, at least three days before such special meeting. In case, at such special meeting, the directors shall after hearing such director or officer, determine by an affirmative vote of two-thirds of all the directors in office, that sufficient cause exists or his removal, and that his removal is for the best interest of the Society, then such person shall immediately cease to be a director or officer as the case may be, and the resulting vacancy shall be filled as provided in Section 5 next above.

The Board of Directors may suspend from office any officer or director against whom charges have been preferred.

Section 7. No member of the Board of Directors shall be disqualified from participating in any meeting, action or proceeding of any kind whatever of said Board of Directors, by reason of being or having been a member of a Standing Committee or Special Committee which has made prior inquiry, examination or investigation of the matter under consideration. Nor shall any member of any Standing or Special Committee be disqualified, by reason of such membership, from acting as a member of the Board of Directors upon any appeal from any decision of such Standing or Special Committee. But no member shall participate in the adjudication of any case in which he is personally interested.

Section 8. The Board of Directors may, by a two-thirds vote of its members present, require that any member of the Society shall submit to the Board of Directors or any Standing or Special Committee, for examination, such portion of his books or papers as are material and relevant to any matter under investigation by said Board of Directors or by any Standing or Special Committee.

Any member who shall refuse or neglect to comply with such requirements, or shall wilfully destroy any such required evidence, or who, being duly summoned, in pursuance of a two-thirds vote of the members of the Board of Directors present, shall refuse or neglect to appear before the Board of Directors or any Standing or Special Committee, as a witness, or refuse to testify before any such Committee, may be adjudged guilty of an act detrimental to the interest or welfare of the Society.

Final Decision by Trial

Section 9. Any hearing or trial may be adjourned, from time to time, by the Board of Directors in its discretion; but no member thereof, who shall not have been present at every meeting of said Board of Directors at which evidence is taken, or at which an accused member, or a member whose conduct is involved in the hearing or trial, is heard, shall participate in the final decision.

Irticle VI Office

Shall consist of a President, two Vice-Presidents, a Secretary, Assistant Secretary, an Assistant Treasurer who shall be Directors of the Society, and a Counsel who need not be a member of the Society. a Treasurer and an Assistant SECTION I.

Election of Officers

SECTION 2. The President, the Vice-Presidents the Secretary, Assistant Secretary, the Treasurer, and Assistant Treasurer, shall be elected annually by the Board of Directors by a two-thirds vote of the entire board, and such officers shall hold the same offices in the Board of Directors. Each officer, excepting the Counsel, shall serve for the term of one year and until the election and qualification of his successor.

Appointment of Counsel

3

The Counsel shall be appointed by the Board of Directors for such term as may bedecided by the Board. SECTION 3.

Vacancy of Office

No. 4. In case a vacancy shall occur in the office either of the President, Vice-Presidents, Assistant Secretary, Treasurer or Assistant Treasurer, an election shall be held forthwith to fill vacancy for the unexpired term. SECTION 4. Secretary,

Expulsion or Suspension of Officer

SECTION 5. The expulsion or suspension of a member holding any office or position, to which he has been either elected or appointed, shall create a vacancy therein which shall be filled a member holding as provided in these articles.

The President Article VII

SECTION 1.3 The President shall be the chief executive officer of the Society. He shall preside at all meetings of the Board of Directors. He shall have general supervision over the business af-

He shall see that all orders and resolutions of the Board of Directors and of the Society are carried into effect and he shall sign all contracts and agreements authorized by the Board of Directors, tors, unless the Board shall otherwise direct. The President shall submit to the Board of Directors, as soon as may be after the close of each fiscal year, and to the members at each annual meeting a complete report of the operations of the Society or the preceding year, and of the state of its affairs, making such recommendations as he thinks proper, and he shall from time to time report to the Board of Directors all matters within his knowledge which the interests of the members may require to be brought to its notice. The President shall be ex-officio a member of all standing

The Vice-President Article VIII

SECTION I. The Vice-President shall have such powers and perform such duties as the Board of Directors may from time to time prescribe, and perform such other duties as may be prescribed in these by-laws. In case of the absence of the President or his inability to act, the Vice-President shall discharge the duties of the President.

upon the authorized depositaries of the Society, signed by the President or Vice-President and countersigned by himself or an assistant Treasurer. He shall take and preserve proper vouchers for all moneys disbursed. He shall render to the President or to the directors, at the regular meetings of the Board, whenever the President or said Board shall require him to do so, and at every annual meeting of the Society an account of the financial conditions of the Society and of all of his transactions as Treasurer; and as soon as may be after the close of each fiscal year he shall make and submit to the Board of Directors a like report for each fiscal year. He shall keep at the principal office of the Society full and correct books of account of all its business and transactions. He shall give to the Society a bond in such sum as the Board of Directors may from time to time designate conditioned for the faithful performance of the duties of his office and the restoration to the Society at the expiration of the term of his office or in case of his death, resignation or removal from office, of all books, papers, vouchers, money or other property of whateven kind in his possession belonging to the Society. In the absence of the Treasurer or his inability to act, the Assistant Treasurer shall perform all the duties of the Treasurer. The Treasurer shall pay no bills unless they are properly certified by the officer of committee authorized by the Board of Directors to make the expenditures. The books and accounts of the Society shall be audited monthly in such manner SECTION 1. The Treasurer shall have charge of the funds, securities, receipts and disbursements of the Society. He shall deposit all moneys and other valuable effects in the name and to the credit of the Society in such depositaries as the Board of Directors may from time to time designate. He shall disburse the funds of the Society as may be ordered by the Board, by checks or drafts as the Board of Directors may order.

The Secretary Article X

SECTION I. The Secretary shall be ex-officio Secretary of the Board of Directors and of all standing committees. He shall record all the votes and proceedings of the meetings of the Society, and of the Board of Directors, and of all committees, in a book or books. He shall record all the votes and proceedings of the meetings of the Society, and when authorized by the Board of Directors he shall affix such seal to any instrument requiring the same. He shall countersign all contracts and agreements signed by the President. The seal of the Society, so affixed, shall always be attested by the signature of the Secretary, or an Assistant Secretary. He shall give notice of all meetings of the Society, and of the Directors, and of all committees and of all calls for assessments to be paid by the members. The Secretary shall also have such other powers and perform such other duties as pertain to his office, or as the Board of Directors may from time to time prescribe. In the absence of the Secretary or his inability to act, the Assistant Secretary shall have all the foregoing duties.

The Counsel Article XI

He shall have supervision of all matters involving legal questions, and shall appear for the Society in all actions or proceedings. The Counsel shall be the legal adviser of the Society, the Board and the various committees. He shall

Article XII

Absence or Suspension of Officer

In case of the absence of the President, a Vice-President, the Secretary, Assistant Secretary, the Treasurer or Assistant Treasurer, or in case of the suspension of any such officer pending his trial on charges, the Board may delegate his powers and duties to any other officer, or to any Director for the time being.

Article XIII

- The order of business at the meetings of the Board shall be as follows:

 1. A quorum of thirteen members being present the President shall call the Board to order.

 2. The minutes of the last meeting shall be read and considered as approved, if there be
- Reports of officers of the Society.
 - Reports of Committees.

- 5. Unfinished business.
- 6. Miscellaneous business.
 - 7. New business.

Article XIV Standing Committees

FINANCE COMMITTEE. There shall be a Finance Committee of three Directors appointed by the President shall examine all accounts of the Society at the close of each fiscal appointed by the President, who shall attend to and supervise all the fiscal operations of the Society to the extent and in the manner directed by the Board, and this or such other committee as may be other times as may be deemed necessary, and report thereon. and at such

SECTION 2. ADMINISTRATIVE COMMITTEE. The President-may also appoint an Administrative Committee from the members, who shall advise with and aid the officers of the Society in all matconcerning its interests and the management of its business and generally perform such duties exercise such powers as may be prescribed or delegated by the Board of Directors from time to time. This Committee shall consist of such number as the President shall from time to time see (See Section 5.)

SECTION 3. MEMBERSHIP COMMITTEE. The President shall appoint a Membership Commit-consisting of five directors who shall pass upon the applications filed with the Committee and shall verify the statements therein contained, and may require of each applicant additional proof of eligibility to membership.

The Complaint Committee shall consist of three mem-Section 4. Complaint Committee. The bers of the Board appointed by the President.

fense, and shall be afforded an opportunity to examine all charges, papers and evidence submitted to the Committee, and to make answer thereto. The Committee shall have power to make rules respecting hearings upon such complaints. Proceedings before the Committee shall be confidential, and shall be disclosed only as the Directors order, after the proceedings have been reported to them. Should the circumstances warrant, the complaint shall be referred to the Board of Directors with Any member against whom a complaint is made before this Committee of violation of the Articles of Association, the by-laws or any resolution of the Society, or of the Board of Directors, regulating the conduct of the members, or of any conduct or proceeding inconsistent with the Articbefore final action in the case, and, if in the opinion of the Board, the charge or charges against Board, censure, fine, suspend or expel said member, and the decision of the Board of Directors shall be conclusive and final.

Section 5. Term of Committees. All standing committees shall be appointed for a term les of Association, or of misconduct, fraud, fraudulent acts or acts derogatory to the welfare of or mon before it the accused member where he shall have an opportunity to be again heard in person prejudicial to the Society, shall be notified thereof, and if he desires he shall be heard in his deall evidence taken before the Committee, and the Board, after investigating said charges, shall sumsaid accused member be substantiated, it may by a vote of not less than two-thirds of shall

and shall remain in office until successors are appointed, or until vacated or voided of one year, and shall rema by the Board of Directors.

Except as to the Administrative Committee the membership of Committees shall consist exclusively of members of the Society.

the allotment of royalties—one for the classification of "Music Publisher" members and one for the classification of "Composer and Author" members. The Classification Committee for the Music Publisher Members shall consist of the publisher members of the Board of Directors, and the Clas-CLASSIFICATION COMMITTEE. There shall be two Classification Committees for sification Committee for the composer and author of members shall consist of the composer and author members of the Board of Directors. SECTION 6.

Each such committee shall meet not less than once in each quarter for the purpose of classifying the members over which it shall have jurisdiction.

written or published by such member, the popularity and vogue of such works, the length of time in which the works of the member have been a part of the catalogue of the Society and generally the prestige, reputation, qualifications, standing and service which such member has rendered to the It shall be the duty of the Classification Committee to determine the status of each member of Society with respect to the share of the royalties to which he is entitled in the distribution royalties directed to be made by the Board of Directors. Such Committees, in fixing the status of a member shall take into consideration the number, nature and character of works composed,

revise the classification of the respective members, to the end that the allotment and apportion it of the royalties among the respective members shall be fair, just and equitable to the entire Such Committee shall, before any distribution of royalties is ordered by the Board, review ise the classification of the respective members, to the

advance or reduce a member, as the case may be, from one class to another as the facts and cir-The Classification Committee shall create several classes, each such class to consist of a group of members having a like status; each member of such group to share equally in the distribution of royalties with the other members of such group. The Committees shall diffeently and industriously make due and proper investigation, before each distribution, of the members' tances may warrant, based upon the standards hereinabove set forth.

Protest and Appeal from Classification

Any member, aggrieved by his classification may, after any distribution, file a protest in writ-with the Classification Committee having jurisdiction over his classification. It shall be the ing hearings upon such protests, with full power to appoint a sub-committee to investigate such duty of the Classification Committee to hear such member and to accept from him all papers in evidence submitted to the Committee. The Committee shall have the power to make rules respect-

The member shall have the right to appeal from such decision to the Board of Directors by filing a notice of appeal in writing with the Secretary of the Society, in which case the protest, with all evidence taken before the Committee shall be referred to the Board of Directors. The Board, after investigating such protest, shall determine the classification of such member by a vote of not less than two-thirds of the directors present. The decision of the Board of Directors shall be conclusive and final. In case of a reclassification of a member, such reclassification shall not be retroactive The Committee shall make its decision within thirty days from the date of filing the but shall become effective on the sucreeding distribution.

Writers' Board of Appeals

ly from the general membership (publisher members not voting) three committees, each to consist of three members, one committee of popular song composers and authors, one committee of pro-In addition to the composer and author Classification Committee, there shall be elected annual. duction composers and authors, and one committee of standard composers and authors; these three committees shall constitute a composer and author board of appeals of nine men, and the personnel of said committees shall be made up as follows:

The Secretary of the Society shall, prior to ninety (90) days before the annual meeting, mail to the class AA members in the popular and production groups, a complete alphabetical list of all Class AA composer and author members of each group and to all standard members a complete ing the dassification of any of those whose names appear on the list; he shall at the same time mail to Class A through B (inclusive), members in the popular and production groups, a complete and alphabetical list of all Class A through B members and each of these respective groups without disclosing the classification of any of the members whose names appear on the list; he shall, at the disclosing the classification of any of the members whose names appear on the list; he shall, groups, a complete and alphabetical list of all Class CC through 3 (inclusive), members of each of these groups without disclosing the classification of any of the members whose names appear on the list, and mail to the standard group classes DD through 3, a complete alphabetical list of members of these groups without disclosing the classification of any of the members whose names time, mail to the standard and composer groups from Classes B through C (inclusive), withat the same time, mail to Class CC through, 3 (inclusive), members in the popular and production alphabetical list of all Class AA composer and author members to BB (inclusive) without on the list.

The members of each group shall vote to elect one member of said group to each of the three committees constituting the composer and author board of appeals; the person receiving the greatest number of votes in his respective group shall be deemed to be elected to said board of appeals; in the event such member is not available for service, then the person in the same group receiving the next greatest number of votes shall automatically take the place of the absentee as an alternate member of the Board of Appeals.

These nine men so elected shall constitute the Board of Appeals, and said Board shall consist of the following three committees taken from the following groups of classification: I meraber on the Popular Writers' Committee from Class AA.

on the Popular Writers' Committee from Classes A through B (inclusive). on the Popular Writers' Committee from Classes CC through 3 (inclusive). on the Production Writers' Committee from Class AA. on the Production Writers' Committee from Classes A through B (inclusive

member

on the Production Writers' Committee from Classes CC through 3 (inclusive). on the Standard Writers' Committee from Classes AA through 5B (inclusive). on the Standard Writers' Committee from Classes B through C (inclusive). on the Standard Writers' Committee from Classes DD through 3 (inclusive). Classes A through B (inclusive) nember member

member

member

The pr

Any member who is dissatisfied with the decision of the Classification Committee may give notice in writing to the Secretary that he proposes to appeal to the Committee on the Board of Appeals which represents his particular group (popular, production or standard), the said Committee shall entertain his appeal and give him an opportunity to appear in person, if he so desires, or to present his appeal in writing, or both; if the said Committee decides against the member, its decision shall be deemed final; unless the Classification Committee feels that it is to the interest and shall likewise be deemed final, unless the Classification Committee feels that it is to the interest and shall so state in writing, and an appeal he allowed; in such case, the Classification Committee, itself, to the entire Board of Appeals of the composers and authors, consisting of nine members; such appeal may be presented in writing or by oral hearing, or both; the decision of such Board procedure on appeals shall be as follows: member who is dissatisfied with the decisi

of Appeals shall be considered final.

Members shall be given not less than five (5) days notice of the date when their appeal will

be heard.

Appeals shall be heard in regular order, and the Board of Appeals shall meet at least once every three months, and until all appeals have been heard.

A majority vote of the Board of Appeals shall rule.

If a member of the Board of Appeals is dissatisfied with his classification and desires to make an appeal, he shall first do so to the Classification Committee and if not satisfied with its decision, then he shall have the right to appeal to the entire Board of Directors of the Society, whose decision

The Classification Committee shall delegate one of its members to be at the disposal of the said Board of Appeals at all times with the necessary data, cards and other information required, and shall supply all information required to said Board of Appeals whenever so requested; the counting and tally of ballots of election shall be under the direction and supervision of the General Manager and President of the Society; the election of the members of the Committees and Board of Appeals of the Composers and Authors, shall take place at least one month prior to the annual meeting of the Society, and the results thereof shall be announced at the annual meeting of the Weeks after the passing of this amendment by the general body.

The decisions of the Board of Appeals, with respect to the proper classification of members, each year, except that the first election shall take place not more than two (2)

The Board of Directors of the Society shall make the rules of procedure by which the Board of Appeals shall be governed.

If any member of the Board of Appeals is advanced out of the class and group from which he is elected, then he shall immediately be replaced by his alternate in that particular class and

No member elected to serve on the Board of Directors of the Society shall be eligible to serve on the Board of Appeals.

lishers, under Article XIV, Section 6, and at all times take into consideration all data, etc., which from time to time are used by the Classification Committee in arriving at the just classification of The Board of Appeals must at all times adhere to the rules and regulations of classification contained in the Articles of Association of the American Society of Composers, Authors and Pul

The Board of Directors shall, at its first ingular meeting after this amendment is passed and put into effect, fix proper compensation to be paid to the members of the Board of Appeals, at such times as they are required to hold meetings.

The foregoing provisions shall apply only to Author and Composer members of the Society, and not to Publisher members.

This amendment is to take effect immediately.

In addition to the Classification Committee for the music publisher members, there shall be elected annually from the general membership (composer and author members not voting) two separate committees of three members each, to be known respectively as the

(1) "Popular Publishers' Board of Appeals"

(2) "Standard Publishers' Board of Appeals"

and the personnel of each of said committee shall be selected as follows:

(1) The Secretary of the Society shall, prior to ninety (90) days before the Annual Meeting, mail to each and every publisher-member a complete alphabetical list of all publisher-members of the Society, without disclosing the classification of any of such members; he shall also at the same time send to each publisher-member a ballot.

"Popular" publisher-member shall, prior to the Annual Meeting, fill out said ballor, each "Popular" publishers' Board of Appeals"; and each "Standard" publisher-member voting for three members of the "Standard Publishers' Board of Appeals".

Each such ballot shall be returned by mail to the Society and shall be opened and inspected

jointly by the Prerident and General Manager of the Society who shall make a record of each vote.

The three persons receiving the highest number of votes in each class shall be deemed elected the members of the indicated ("Popular" or "Standard") Publishers' Board of Appeals and the three persons in each class receiving the second highest number of votes shall be deemed to be alternates

to serve in place of those elected in any case and under all circumstances and with the full powers of the duly elected incumbent in the event of his inability or refusal for any reason to serve.

(3) Appeals of "Popular" publisher-members may be presented to and considered by the "Popular Publishers' Board of Appeals" only, and appeals of "Standard" publisher-members may be presented to and considered by the "Standard Publishers' Board of Appeals" only.

(4) The Publishers' Board of Appeals shall meet only in the City of New York, and their respective procedure on appeals presented to them shall be as follows:

(a) Any publishers' Classi-

fication Committee, may give notice in writing to the Secretary that he proposes to appeal to the appropriate Publishers' Board of Appeals shall entertain his appeal and give appellant an opportunity to appear in person, if he so desires; or to present his appeal in writing, or both; on such appeal a sub-committee appointed by the Publishers' Classification Committee niay also appear and give evidence justifying its classification of said publishers' Board of Appeals decides against the publish-

r, its decision shall be deemed final.
If the said Publisher's Board of Appeals decides that the publisher-member has been 9

improperly classified, said Board shall bring up such question for review before the Board of Directors as a whole, within thirty (30) days after the filing of the decision of the Board of Directors shall proceed with the question in the manner provided for by these Articles of Association, and the decision of the Board of Directors shall be final.

(c) No member of the Publishers' Classification Committee nor of the Board of Directors shall be eligible to serve as a member of either Publishers' Board of Appeals, nor shall there be eligible to membership on said Board, more than one individual representative of a firm of publishers; such member is to be designated by the firm or corporation publishermember and his name placed on file with the Secretary of the Society, prior to the annual vote; the expression—"Firm of Publishers" shall include not only publisher-members, corporate, partnership or individual, but all firms, whether corporate, partnership or individual allied with his classification and desires to make an appeal, he shall first do so to the Publishers' tisfied with his classification and desires to make an appeal, he shall first do so to the Publishers'

Classification Committee, and if not satisfied with its decision, then he shall have the right to appeal to the entire Board of Directors of the Society, whose decision shall be final.

(d) A majority of the Board of Appeals shall rule; publisher-members shall be given not less than ten (10) days' notice of the date when their appeal will be heard; appeals shall be heard in regular order.

(e) The Publishers' Classification Committee shall delegate at least one of its members to be at the disposal of the said Publishers' Board of Appeals at all times with the necessary data, cards and other information required, and shall supply all information required to said Publishers' Board of Appeals whenever so requested.

(f) The Publishers' Board of Appeals must at all times adhere to the rules and regulations of classification as contained in the Articles of Association of the American Society, of Composers. Authors and Publishers under Article XIV, Section 6, and must at all times take into consideration all data, etc., which from time to time are used by the Publishers' Classification Committee in arriving at the just classification of members.

(g) The Board of Directors shall at its first regular meeting after this amendment is

Board of Appeals at such times as they are required to hold hearings.

(h) The General Manager shall, within ten (10) days after the adoption of this amendment send to each publisher-member a form upon which the said member shall be required to indicate into which class of membership, "Popular" or "Standard" he desires to be registered. Upon registration in such class a member may vote as provided in Paragraph 2 above only for members of the Publishers' Board Appeals of the Class indicated.

Any appeal brought by such member shall be considered only by the Board of Appeals upon request in writing addressed to the Secretary of the Society and approval of such refunctioning in respect to that class. However, a member desiring to change his class may

quest by the Board of Directors.

(i) The foregoing provisions shall apply only to publisher-members, and not to author and composer members of the Society.

This amendment to take effect immediately.

Section 7. Relief Committee of three Directors, ap-Section 7. Relief Committee. There shall be a Relief Committee of three Directors, appointed by the President, consisting of one publisher, one author and one composer, who shall investigate requests or applications for relief on behalf of a sick, infirm, needy or deserving member or his widow, infant children or indigent parent. Upon the recommendation of such Committee the Board may direct the payment of such sum or sums as in its judgment will satisfy the immediate

necessities of such person or persons, and to make advances, from any royalties thereafter to accrue to the member, such advances to be repaid to the Society by deducting the whole or any part there of from any subsequent distributions awarded to such member.

The Board of Directors shall annually devote a part of the proceeds derived from its operations to the purpose of giving financial aid to members of the Society, their widows, infant children or indigent parents. The giving of such assistance is optional and shall only be granted in cases of urgent necessity, and the Society does not vouchsafe to its members the right to receive assistance. Any moneys paid out on account of relief must always be entered in the books of the Society with a statement of the actual purpose for which they were disbursed, and not merely under the head of "Relief."

Article XV

Apportionment of Royalties

Section 1. All royalties and license fees collected by the Society shall be from time to time as ordered by the Board of Directors distributed among its members, provided, however:

That all expenses of operation of the Society and sums payable to foreign affiliated So-3

cieties shall be deducted therefrom and duly paid; and
(b) That the Board of Directors, by two-thirds vote of those present at any regular meeting may add to the Reserve Fund any portion not exceeding 10% of the total amount available for

(c) That the net amount remaining after such deduction for distribution shall be apportioned as follows: one-half (54) thereof to be distributed among the "Music Publisher" members, and one-half (54) among the "Composer and Author" members respectively.

SECTION 2. The Board of Directors, by a two-thirds vote of all those present, shall have the right to create and from time to time to add to the reserve fund, and may direct that a portion of the royalties as and when collected be placed in such reserve fund.

Unclaimed Royalties

owners shall remain in the General Fund of the Society for a period of six years. Three months prior to the expiration of said six years, notices shall be given to the parties lawfully entitled thereto, by registered mail, requiring them to receive said royalties within three months, and after the expiration of said three months, such royalties, if not claimed, shall become the absolute property Royalties which have been apportioned and which have not been claimed by the SECTION 3 of the Society.

Article XVI

General Powers and Duties of Committees Quorum of Committees

A majority of each committee shall constitute a quorum thereof. SECTION I.

Meetings of Committees

Section 2. Each Committee, unless otherwise voted by the Committee, shall meet at least monthly upon a date to be fixed by the Committee, except during the months of July, August and September. The Secretary shall send notices of each meeting to the members thereof at least three days in advance of the meeting.

Absence of Member of Committee

Section 3. If any member of any Committee is absent from two successive meetings without an excuse presented to the Committee, his place may be declared vacant by the President.

Minutes of Committee

Section 4. The standing committees shall keep regular minutes of their transactions and cause them to be recorded in a book kept in the office of the Society for that purpose, and report the same to the Board of Directors at its regular meetings.

Article XVII

Special Committee

they desire the Society to prosecute arry matter within the scope of the Society, the President shall appoint a special committee to investigate the matter and report to the Board of Directors with its opinion thereon whether it is advantageous and for the best interest of the Society to undertake the prosecution of such matter. The Board of Directors shall carefully consider such report and a two-thirds vote of all the directors shall determine whether or not such prosecution shall be un-Whenever any twenty-five members of the Society shall certify to the Board of Directors that

Article XVIII

General Meetings of the Society

SECTION 1. The General Annual Meeting shall be held each year during the month of March. An additional General Membership Meeting shall be held in the month of October of each year, Special meetings may be called at any time by the Board of Directors.

Business Transacted at General Meetings

Section 2. No business shall be submitted to the General Annual Meeting, uniess it has been brought to the knowledge of the Board of Directors at least eight days in advance. The General Annual Meeting shall, however, be entitled in any event to lay aside any such business as it may consider inopportune.

Motion or Resolution in Writing

Section 3. Every motion or resolution which shall be made or offered at any meeting of the Society shall, at the request of the Secretary, be reduced to writing and furnished to the Secretary before the question shall be put.

Article XIX

Notices

Section I. Whenever notice is required to be given to any member, such notice shall not be required to be given by personal service, but such notice shall be deemed to have been given from and at the time when said notice in writing shall have been deposited in the Post Office, or in any dressed to the member at his last known place of residence, as the same shall appear upon the books of the Society, or if such address shall not appear upon the books of the Society, then to such address as may appear in any directory of the municipality in which he may reside or do regular United States mailing box in the City of New York, enclosed in a post-paid wrapper, business.

Article XX

Expulsion and Termination of Rights of Memb

connection with the Society, all rights and interest of whatsoever character, sort or kind, to, of, in or concerning the Society by virtue of such membership, shall instantly cease and be of no further force and effect. Expulsion shall not relieve any member from his obligations to the Society up or who is dropped for right or claim in, to or under the Society, the property thereof, and the dues and assessments paid Upon expulsion, death, bankruptcy, insolvency or other severance of membership in or the non-payment of dues, fines or assessments, shall thereupon lose and forfeit any and all interest, Any member who is expelled by the Board of Directors, to the date of such expulsion.

Posthumous Membership

On the death of any member his rights in the Society and membership shall cease, and neither his rights nor his membership nor any right therein shall at any time be, by SECTION 2.

voluntary assignment, operation of law, legal proceedings or otherwise, vested in any other person whomsoever; provided, however,

That in the sole discretion of the Board of Directors the heir, heirs, or next of kin of a deceased member may be awarded a share in royalty distributions not exceeding that which would, in the judgment of the proper Classification Committee, have been awarded to the deceased member had he been living at the time of such royalty distribution.

Bankruptcy of Member

Section 3. The Board of Directors shall have the right to suspend payments of royalties to say, member in case of the filing of a petition in bankruptcy by or against him, and/or the adjudication of such member a bankrupt, or the execution by such member of an assignment for the benefit of creditors, or the taking advantage by him of the insolvency laws of any State, Territory or Country, or the appointment of a receiver, trustee or liquidator of the assets and property of the member, or the voluntary or involuntary dissolution of a member.

The representative of any member of "Music Publishers" class who shall be a member of the

Board of Directors shall immediately upon the happening of any such contingencies be dropped from the Board of Directors.

The royalties, or the right to participate in the royalties, and the rights of the members in the Society, shall not be sold or otherwise disposed of by any member, and shall not be the subject of sale or other disposition by voluntary action, operation of law, legal proceedings or otherwise, and no member shall sell, otherwise dispose of, hypothecate or create a lien upon any royalties accruing, or that may thereafter accrue to him, by virtue of his membership, or any of the rights, privileges, benefits, royalties or emoluments to which he may be entitled by virtue of his member-

XXI Article

A mendments

a vote of two-thirds of the members present at any meel voting on such an ing of the Society held for the purpose of These Articles may be amended by

[FLORIDA STATUTE]

SENATE BILL NO. 679

to be paid to it or to its members for the privilege of rendering privately or publicly for profit copyrighted vocal or instrumental musical compositions, when such combination is composed of a substantial number of all musical composers, copyright owners, or their heirs, successors, or assigns, to require each composer and each author of vocal or instrumental copyrighted musical compositions to act independently of any combination as herein declared unlawful in determining license fees and other rights; to require the authoring declared unlawful in determining license fees and other rights; to require the authoring declared unlawful in determining license fees and other rights; to require the authorial compositions and other rights; to require the authorial composition as an action of the rights of the composition and the rights of the right of the rights of the right of the and nonenforceable; to permit the present owners, possessors and users of such copyrighted music to render the same privately or publicly for profit without interference by such unlawful combination; to provide for the protection of theatres, moving picture sons, firms or corporations outside of the State of Florida, against the collection of license fees or other exactions by such out of the State affiliates for or on account of any combination herein declared unlawful; to provide all liability for any infringement of copyrighted musical compositions conveyed by radio broadcasting, air, wire, electrical transcription or sound producing apparatus, or by personal performance coming outside of the State of Florida and used herein to rest exclusively on the out of the State person, firm or corporation originally sending the same into this State for use herein; to provide hereof to proceed to enforce the penalties hereof against such combination and any of its members, agents or representatives; to empower any party aggrieved by any violation hereof to proceed in his own right hereunder; to define the legal procedure required to carry out the provisions herein; to provide for the recovery of costs, expenses and attorney's fees; to provide that the terms of this Act shall be cumulative; to provide that any part of this Act declared illegal shall not affect the validity of the remaining parts hereof. composer and publisher to specify upon the musical composition the selling price thereof, including public performance for profit; to declare that any purchaser thereof, who pays such price therefor shall have the right to render such music privately or pubpenalties for the violation hereof; to empower the State's Attorney, under the direction aggrieved by any violation AN ACT declaring to be an unlawful monopoly and its purposes to be in restraint of trade, amusement, radio broadand radio receiving and radio re-broadcasting stations affiliated with other perany combination of persons, firms or corporations which determine the amount of money for made with any combination, firm or corporation herein declared unlawful, to be for profit; to declare all existing agreements requiring license fees or other tions for the privilege of rendering copyrighted musical compositions publicly possessors and nouses, hotels, places for education and public performance or General, upon the complaint of any party of the Attorney casting licly

Be It Enacted by the Legislature of the State of Florida:

mination and fixation of license fees or other exactions required by such combination for itself of its members or other interested parties for any use or rendition of copyrighted vocal or instrumental musical compositions for private or public performance for profit; and the collection or attempted collection of such license fee or other exaction so fixed and determined by any member, agent, or representative of such combination herein declared unlawful, from any person, firm or corporation within this State, including theatres, radio reor corporations within the United States who own or control copyrighted vocal or instruceiving, radio broadcasting and radio re-broadcasting stations, moving picture houses, hotels, restaurants, clubs, dance halls, recreation rooms, pavilions, colleges, universities, churches ection 1. It shall be unlawful for authors, composers, publishers, owners, or their heirs, cessors or assigns, of copyrighted vocal or instrumental musical compositions to form any society, association, partnership, corporation or other group or entity, called herein a comcompositions, and when one of the objects of such combination is the deteror the officers, directors proprietors, managers, owners or representatives thereof, who render or cause to be rendered bination, when the members therein constitute a substantial number of the persons, or any one who uses music in the conduct of his business, mental musical Section 1.

ately or publicly for profit through personal performance, or through radio or any instrumentality or sound producing apparatus, shall be and the same are hereby declared unlawful and illegal; and such license fees or other exactions by such combination or its agents, members, or interested parties shall not be collected in any Court within the boundaries of this successors or assigns, as herein defined, is hereby declared to be an unlawful monopoly, in this State; and the fixing of prices or exactions for use or readition of copyrighted musical State; and such collection or attempted collection of such license fee or other exaction by such combination or its agents, members or interested parties, shall be a separate offense authors, composers or publishers, or their heirs, compositions and the collecting or attempting to collect such license fees or other exactions by it or for its members or other interested parties, is hereby declared illegal and in restraint of trade; and such collection or attempted collection is declared to be an intra-state transaction within this State, and shall be subject to the terms and penalties of this Act. compositions and the collecting or attempting to collect such license nereunder; and any such combination of

righted musical composition by persons individually or with other performers, actors and singers, or by an individual instrument player, or by orchestras and bands, or over or through or by means of radio loud speakers, radio receiving, radio broadcasting and radio re-broadcasting stations, electrical transcriptions, musical records, sound apparatus or otherwise, and the same may be so rendered either privately or publicly for profit without furshall specify or cause to be specified legibly upon the musical composition, in whatever form the same may be published, printed, manufactured or otherwise prepared for use or rendition, the selling price thereof so arrived at and determined for all uses and purposes; and when any purchaser or user acquires the same within this State and pays the selling price ther license fees or other exactions; and such copyright owner or proprietor in such event All authors, composers or publishers, and their heirs, successors or assigns, chaser or user may use or render, or cause or permit to be used or rendered, the said copyshall be deemed to have received full compensation for the rendition and all uses of such so specified thereon to the seller or publisher of such musical composition, then said musical compositions for private and public performance for profit.

Section 2-B. In the event any author, composer or publisher, or any of his heirs; successors or assigns, fails or refuses to affix on the musical composition the selling price, and collect the same, for private or public performances for profit, at the time and in the manner specified in this Act, then any person, firm or corporation in this State who may have purson, firm or corporation so using or rendering the same shall be free from any and all liability in any infringement or injunction suit, or in any action to collect damages instituted by such copyright proprietor or owner in any Court within this State. who may have puror public performance for profit without further license fee or other exaction; and such perchased and paid for such copyrighted musical composition, may use the same in any infringement or injunction suit,

Nothing in this Section or this Act shall be construed to give to any purchaser of copyrighted musical compositions, as herein provided, the right to resell, copy, print, publish or vend the same; nor to prevent authors and composers from determining positions provided such authors and composers act independently of any such combination and fixing the price to be charged for the use or rendition of their copyrighted musical comas in Section 1 hereof declared unlawful. Section 2-C.

Section 3. All existing contracts, agreements or licenses now existing within this State, made by any person, firm or corporation with any combination declared unlawful under Section 1 hereof, are hereby declared void and non-enforcible in any Court within this State, and are hereby declared to have been entered into as intra-state transactions with such unbination enforcing or attempting to enforce the terms of such existing contract, agreement or license, shall be guilty of a violation of the terms of this Act; and for any collection or attempted collection of moneys set out in the illegal contract, agreement or license, shall lawful combinations and in restraint of trade. And all such contracts, agreements, licenses and the attempted enforcement thereof may be enjoined by any person, firm or corporation sought to be bound thereby; and any agent, member or representative of such unlawful combe subject to the penalties of this Act.

Section 4-A. Any person, firm or corporation who owns, leases, operates or manages a radio broadcasting, radio receiving or radio re-broadcasting station within this State, shall be and is hereby authorized to receive, broadcast and re-broadcast copyrighted vocal or in-

strumental musical compositions, the copyrights of which are owned or controlled by any such combination declared unlawful by Section 1 hereof, without the payment, to such ombination or to its agents, representatives or assigns, of any license fee or other exaction and non-collectible by the terms hereof.

other contract, then such person, firm or corporation owning, leasing, operating or managing a radio broadcasting station outside this State, shall be and is hereby prohibited from in any manner charging or attempting to charge, or collecting or attempting to collect, from any person, firm or corporation who owns, leases, operates or manages a radio broadcasting, radio receiving or radio re-broadcasting station within this State, any herein declared noncollectible license fee or other exaction, for the purpose of paying or repaying the same outside this State to any combination, or its members, stockholders or other interested parties, declared unlawful by Section 1 hereof; and any such person, firm or corporation, collecting or attempting to collect such license fee or other exaction against such persons, firms or corporations within this State for the purpose of paying or reimbursing itself for having paid any such license fee or other exaction herein declared unlawful and non-collectible, shall be deemed guilty of a violation of the provisions of this Act; and such person, firm or corporation from without this State is hereby declared to be an agent and representative of such combination as declared illegal and unlawful by Section 1 hereof, and shall be sub-When such radio receiving, radio broadcasting or radio re-broadcasting station is affiliated with any other person, firm or corporation owning, leasing or operating a radio broadcasting station outside this State from whence copyrighted vocal or instrumental musical compositions originate or emanate, and which are received, used, broadcast or rebroadcast within this State, in accordance with the terms of any affiliation agreement or or such combination as declared illegal and unlawful by Section 1 hereof, and shall be sub-

artists, singers, musicians, orchestras, bands, or actors, or by loud speakers, radio, sound production or re-production apparatus or instrumentalities, or electrical transcriptions, or by any other means of rendition whatsoever, copyrighted vocal or instrumental musical clared unlawful by Section 1 hereof, without the payment, to such combination, or to its agents, representatives or assigns, of any license fee or other exaction declared illegal and tre or theatres, moving picture house or houses, or a similar place or places for amusement compositions, the copyrights of which are owned or controlled by any such combination deand public performance within this State, shall be and is hereby authorized to receive, use Any person, firm or corporation who owns, operates or manages any thea by the personal performance and render, or cause to be received, used and rendered, artists, singers, musicians, orchestras, bands, or actors, c non-collectible by the terms of this Act. Section 5-A.

Section 5-B When such theatre or theatres, moving picture house or houses, or other places for amusement or performance is or are affiliated or under contract in any manner whatsoever with any other person, firm or corporation furnishing in any form or manner tres, moving picture house or houses, or other places for amusement or public performance within this State, any license fee or other exaction for the purpose of paying or repaying the same to any such combination declared unlawful by Section 1 hereof for the use, rendition or performance of such copyrighted musical compositions; and any such person, firm or corporation, collecting or attempting to collect, such license fee or other exaction from pose of paying or reimbursing itself for having paid any such license fee or other exaction herein declared unlawful and non-collectible, shall be deemed guilty of a violation of the provisions of this Act; and such person, firm or corporation from without this State is hereby declared to be an agent and representative of such combination declared illegal and unlawful by Section I hereof, and shall be subject to all the penalties hereof. copyrighted musical compositions from outside this State, or supplying such persons, firms singers, players, orchestras, bands or other artists or talent, wherein or whereby copyrighted vocal or instrumental musical compositions are privately or publicly rendered for profit, then such person, firm or corporation outside this State shall be and is hereby prohibited from in any manner charging or attempting to charge, or collecting or attempting to collect, from any outside this State against such persons, firms or corporations within this State for the pursuch person, firm or corporation who owns, leases, operates or manages such theatre or thea corporations in this State with radio broadcasts or electrical transcriptions, duction instrumentalities or apparatus, or artists, performers, musicians, orchestras, bands or other artists or talent, wherein or whereby copyrig

moving picture nouse or similar precess.

Tradition in any manner of copyrighted vocal or instrumental musical compositions, and which radio stations and theatres, and other persons, firms or corporations sforementioned, righted vocal or instrumental musical compositions originally emanate either by radio, play or sing such music within this State, then the responsibility and liability for the use this State shall rest with and be upon such affiliated person, firm or corporation from outside this State shall rest with and be upon such affiliated person, firm or corporation from outside this State shall rest with and be upon such affiliated person, firm or corporation from outside this State who originates the broadcasting or the performance or the sound production instrumentality or apparatus, or sends the personal singers or performers into this positions shall be and is hereby prohibited from suing for infringement, loss or damage with strumental musical compositions because such persons, firms or corporations used, rendered his collection therefor from the Person, firm or corporations used, rendered his collection therefor from the Person, firm or corporation to proprietor shall make whence the use of said copyrighted vocal or instrumental musical compositions because such persons, firms or corporations used, rendered his collection therefor from the Person, firm or corporation from outside this State from emanated; the use or rendition by radio broadcast, radio re-broadcast or sound producing emanated; the use or rendition by radio broadcast, radio re-broadcast or sound producing emanated; the use or sendition by radio broadcast, radio re-broadcast or sound producing the means of said copyrighted vocal or instrumental resonal performed to a sendition or such or performed to a such personal performed to a sendition or such or performed to a such personal performed t Section 6. Whenever any person, firm or corporation who owns, leases, operates or manages a radio receiving, radio broadcasting or radio re-broadcasting station, or theatre of moving picture house or similar place for amusement and public performance or for the instrumentalities or apparatus, or electrical transcription, or by the personal performance of singers, players and musicians sent into this State, or otherwise, of such copyrighted musical compositions within this State in the manner set forth in this section, shall be considered, for the purpose of this Act, as intra-state business of this State and subject to the control, regulation and prohibitions set forth in this Act notwithstanding that such copy-righted musical compositions originated or emanated from without this State.

Section 7-A. Any person, firm or corporation within this State who shall act as the reshall, for the purpose of this Act, be deemed an official representative and agent of such unlawful combination and shall be construed to be doing business within, this State, and service of any process against such combination may be had upon such representative or the agent of such representative as herein defined; and when so served, such process shall have the same legal effect as if served upon a duly elected officer or managing agent or other official representative upon whom service might otherwise be made upon such com-

tempts to collect license fees or other exactions, or who acts as the representative or agent for any combination declared unlawful in Section 1 hereof, shall, for the purpose of this Section 7-B. Furthermore, any person or persons who negotiates for, or collects, or at Act, be considered as a part of said unlawful combination; and such person, firm or corporation shall be subject to all the penalties in this Act provided for violations thereof.

Section 8. Any combination as in Section 1 hereof declared to be unlawful, and any other person, firm or corporation acting or attempting to act within this State in violation of the terms of this Act, or any representative or agent of any person, firm or corporation who aids or attempts to aid any such unlawful combination as defined in Section I
hereof, in the violation of any of the terms of this Act, in any manner whatsoever, shall be
punished by a fine of not less than \$50.00 or more than \$5,000.00, and by imprisonment in the penitentiary not less than one or more than ten years, or by either such fine or im

restrain violations of this Act, and, on the complaint of any party aggrieved because of the violation of any of the terms of this Act anywhere within this State, it shall be the duty of the State's Attorneys in their respective circuits, under the direction of the Attorney-General, to institute proceedings, civil or criminal or both, under the terms hereof, against any combination as defined in Section I hereof, and against any of its members, agents or re-The several Circuit Courts of this State shall have jurisdiction to prevent and Section 9.

presentatives as herein defined, to enforce any of the rights herein conferred, and to impose any of the penalties herein provided, or to dissolve any such combination as declared unlawful by Section I hereof. In civil actions such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of have been duly notified of such petition, the Court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the Court may at any time make such temporary restraining order as shall be deemed equitable.

the violation or a part thereof took place, to recover any damages assessed as a result of the violation of the terms of this Act, and shall be entitled to recover his or its costs, in-Section 10-A. Any person, firm or corporation in this State aggrieved by reason of anything forbidden in this Act may sue therefor in any Circuit Court in the circuit in which cluding reasonable attorney's fees to be fixed by the Court in such action.

to act promptly, as herein provided, when requested so to do by any aggrieved party, then such party may institute a civil proceeding in his own behalf, or upon behalf of Plaintiff and others similarly situated, as the State's Attorney and the Attorney-General could have instituted under the terms of this Act. Section 10-B. In the event of the failure of the State's Attorney and Attorney-General

Section 11-A. In any proceeding brought under the terms of this Act, any attorney of record for the Plaintiff may file with the Clerk of the Court in which such action is pending, a petition praying that the defendant or defendants be required to file with the Clerk of said Court exact copies of all documentary evidence, records or data in the possession or under the control of said Defendant or Defendants pertaining to the issues as alleged by the Plaintiff in the cause; and the Circuit Court, upon the presentation to it of such petition, shall determine what part, or all, or any of such evidence shall be produced, and enter an order to that effect. A copy of such order shall be mailed to each Defendant at his, her or attorney or attorneys of record for the Defendant or Defendants, and this shall be deemed its last known address, which shall be deemed sufficient notice and service upon such De-Or, the same may be served by mail in the same manner upon the sufficient notice and service upon said Defendant cr Defendants. fendant or Defendants.

Court in which such action is pending said copy or copies of documentary evidence, records and within the time provided in said order, the Court shall adjudge such Defendant or Defendants guilty of contempt and shall assess a fine of \$100.00 against such of the Defendants for each and every day that such Defendant or Defendants fail to comply with said order, and judgment shall be entered accordingly. And the Plaintiff may collect the same against the Defendant or Defendants with interest thereon and costs, including a reasonable attorney's fee. And the Court shall determine when the judgment is rendered what disposition shall be made of the proceeds collected after the payment of costs and Clerk of the If said Defendant or Defendants shall fail to file with the Section 11-B.

have been the legislative intent to pass this Act without such unconstitutional, inoperative or invalid part therein; and, the remainder of this Act, after the exclusion of such part If any section, sub-section, sentence, clause or any part of this Act, is for any reason, held or declared to be unconstitutional, inoperative or void, such holding or invalidity shall not affect the remaining portions of this Act; and it shall be construed to or parts, shall be held and deemed to be valid as if such excluded parts had not been included herein. Section 12.

-0.

Section 13. Nothing in this Act shall be construed as repealing any other law or parts of laws in reference to any of the matters contained in this Act; and the rights and remedies and provisions herein provided shall be and are hereby declared to be cumulative to all other rights, remedies and provisions now provided under the laws of the State of

Section 14. This Act shall become effective immediately upon its becoming a law.

Approved by the Governor June 9, 1937.

Filed in Office Secretary of State June 10, 1937.

AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS THIRTY ROCKEPELER PLAZA NEW YORK CITY



January 15, 1936

Isle of Dreams Broadcasting Corporation Radio Station W.I.O.D. Micmi Beach, Florida

Gentlemen:

ame terms and conditions as therein contained, from the date of its present appration, up to and including December 31, 1940; except that Article 7 of uch license is hereby amended so as to read: It is mutually agreed that the certain license agreement between us, Sept. 20, 1932, effective September 1, 1932, is hereby extended on the

musical numbers, the performing rights of which are licensed under this agreement, then the Licensee shall have the right to terminate this license upon three days' notice by registered mail, addressed to the Society, and this right shall be the sole and exclusive remedy.

The Society reserves the right, at any time, and from time to time, to withdraw from the operation of this license, any musical number or numbers. Upon any such withdrawal the Licensee may immediately terminate this license by giving written notice of its election so to do to the Society.

In the event of any such termination of this License, pursuant to Articles 5 and/or 7 hereof, the Society shall refund to the Licensee pro rata license fees, if any, paid for a period beyond the date of such termination."

and Article 8 is amended by striking out therefrom subdivision (a) and (b).

Very truly yours,

AMERICAN SOCIETY OF COMPOSERS AUTHORS AND PUBLISHERS

By.. HERMAN. GREENBERG....

ACCEPTED:

ISLE OF DREAMS BROADCASTING CORPORATION

By .. P. RRADER .

Dated.

Title Treasurer

2

Call: W.I.O.D.

MEMORANDUM OF AGREEMENT betwon AMERICAN SOCIETY OF COM-POSERS, AUTHORS AND PUBLISHERS, (hereinafter styled "SOCIETY"), and ISLE OF DREAMS BROADCASTING CORPORATION (hereinafter styled "LICEN-SEE"), as follows:

- SOCIETY grants to LICENSEE, its successors and assigns, and LICENSEE r a period of three (3) years from September 1st, 1932, a license to publicly perbroadcasting from Radio Station W. I. O. D. located at Miami Beach, Florida ocepts for a period of three (3) years from September 1st, 1932, a license to publicly per-orm by broadcasting from Radio Station W. I. O. D. located at Miami Beach, Florida on-dramatic renditions of the separate musical compositions heretofore or hereafter during the term hereof copyrighted or composed by members of SOCIETY, or of which SOCIETY shall have the right to license such performing rights.
- casting or otherwise of any rendition or performance of any opera, operetta, musical comedy, 2. The within license does not extend to or include the public performance by broadplay or like production, as such, in whole or in part.

0

- s any right to reproduce or perform publicly for profit by any means, method or whatsoever, any of the musical compositions coming within the purview of the ast rendition to publicly perform or reproduce the same for profit by any means, method Nothing herein contained shall be construed as authorizing LICENSEE to grant within license performed pursuant hereto, or as authoriging any receiver of any such broador process whatsoever. to others
- duly licensed by SOCIETY to perform such works (unless the performance originates at a place or from a source which SOCIETY does not customarily license), from which place 4. The within license is limited to the separate musical compositions heretofore or hereafter during the term hereof copyrighted or composed by members of SOCIETY, or of which SOCIETY shall have the right to license the performing rights hereinbefore ranted, in programs rendered at or from said radio station, or at or from any other place rendition of such works is transmitted to said radio station for the purpose of being broad cast from there.

Article (No. 4) only in the event that it continues to broadcast a program rendered at such places other than the said station after LICENSEE shall have received notice from SO-CIETY that such other places are not licensed by SOCIETY to perform. It is understood, however, that LICENSEE shall be guilty of a breach under this

- The within license is granted upon the express condition: 'n
- That should the power input as at present authorized by the Federal Radio Commission for the said station (1000 watts) be changed during the term hereof, the basic lee as provided in the first paragraph of Article No. 8 here-3
- bility to SOCIETY for the payment of any license fee hereunder; provided, however, that if the license of said station to broadcast is suspended for a SOCIETY thereof, and either SOCIETY or LICENSEE may then terminate this agreement; and in such event, LICENSEE shall be under no further liaeriod less than the term of the within license, then in such event LICENSEE shall be relieved from payment of the license fee hereunder only during such nission is terminated, cancelled, revoked or suspended, or in the event that radio broadcasting is supported from other sources or operated by other than private interests, than as now prevails, LICENSEE shall promptly notify That in event the license of said station from the Federal Radio Com 3

- within license's list of all musical compositions (or, at the option of LICENSEE, a list of all musical compositions bereafter during the term hereof copy ighted or composed by members of SOCIETY or of which SOCIETY shall have the right to license the performing rights hereinbefore granted) by oadcast from or through the said station, showing the title of each somposition and the composer and/or author thereof; provided that LICENSEE shall not be obligated under this Article No. 6 to furnish such a list covering a period or periods in the aggregate during any one calendar year in excess of three months. The lists so furnished by LICENSEE to SOCIETY shall be strictly confidential and SOCIETY coverants that it will make no disclosure thereof or of the contents thereof.
 - CENSEE substantially its present catalogue of compositions heretofore or hereafter during the term hereof copyrighted or composed by members of SOCIETY. SOCIETY reserves the right, however, at any time and from time to time to withdraw from its repertory and from operation of the within license any musical composition or compositions; and upon any such withdrawal, LICENSEE may immediately cancel the within agreement by giving written notice to SOCIETY of its election so to do.

In the event of any such cancellation by LICENSEE, or in the event of a termination of this agreement and the within license pursuant to the provisions of Article No. 5 hereof, or otherwise, SOCIETY stell refund to LICENSEE pro rata license fees, if any, paid for a period beyond the date of such cancellation or termination.

- 8. Under the terms and conditions hereinabove set forth, LICENSEE agrees to pay to SOCIETY, as compensation for the within license, the sum of ONE THOUSAND AND no/00 Dollars (\$1000.00) per annum, payable in equal monthly installments on or before the 10th of each month during the term hereof, plus
 - For the first year of the term hereof, a sum equal to three percent (3%) of the net receipts (as hereinafter defined) of the LICENSEE from the sale of its broadcasting facilities, and,
- For the second year of the term hereof, a sum equal to four percent (4%) of the net receipts (as hereinafter defined) of the LICENSEE from the sale of its broadcasting facilities; and, 3
- For the third year of the term hereof, a sum equal to five percent (5%) of the net receipts (as hereinafter defined) of the LICENSEE from the sale of its broadcasting facilities. 3
- The term "net receipts" from the sale of its broadcasting facilities shall refer to the full amount charged by and actually paid to LICENSEE for the use of its broadcasting facilities (sometimes known as "time on the air"), after deducting commissions not exceeding fifteen percent (15%), if any, paid to the advertising agent or agency (not employed or owned in whole or in part by LICENSEE). 3

each month covering the period of the preceding calendar month on forms supplied gratis by SOCIETY, and shall include in such statements all not receipts without exception, during the said month from the sale of the broadcasting facilities ("time on the air") of the said station, which said statement shall be rendered under oath and accompanied by the remittance due SOCIETY under the terms hereof. Any such statement may also include a deduction by or credit to the LICENSEE for any amount reported by it as received during a prior month from the sale of its broadcasting facilities but which it has been compelled to refund as a "time discount." In the event that any such item shall be collected after it has been credited or deducted as aforesaid, it shall then be included again in the net receipts of LICENSEE on the monthly statement next succeeding the date of the actual collection. LICENSEE shall render monthly statements to SOCIETY on or before the 10th of

SOCIETY shall have the right, by its duly authorized representative, at any time during customary business hours, to examine the books and records of account of LICENSEE only to such extent as may be necessary to verify any such monthly statement of accounting as may be rendered pursuant hereto; provided that such examination does not interfere with the usual conduct of business by LICENSEE.

It is understood and agreed that SOCIETY shall consider all data and information coming to its attention as a result of any such examination of books and records as com and entirely confidential. 10. Upon any breach or default of any terms herein contained, SOCIETY may give LICENSEE thirty (30) days notice in writing to repair or correct such breach or default and in the event that such breach or default has not been repaired or corrected within said thirty (30) days, SOCIETY may then forthwith cancel said license.

LICENSEE from and against any claim, demands, or suits that may be made or brought against the LICENSEE with respect to renditions given during the term hereof in accordance with this license of musical compositions contained in SOCIETY'S repertory hereto-SOCIETY agrees to indemnify, save and hold LICENSEE harmless, and defend fore or hereafter during the term hereof copyrighted or composed by members of SOCIETY. In the event of the service upon LICENSEE of any notice, process, paper or pleading, under which a claim, demand or action is made or begun against LICENSEE on account of any such matter as is hereinabove referred to, LICENSEE shall forthwith give SOCIETY written notice thereof and simultaneously therewith deliver to SOCIETY any such notice, process, paper or pleading, or a copy thereof, and SOCIETY shall have sole and complete charge of the defense of any action or proceeding in which any such notice, process, paper or pleading is served. LICENSEE, however, shall have the right to engage counsel of its own, at its own expense, who may participate in the defense of any such action or proceeding and with whom counsel for SOCIETY shall co-operate. LICENSEE shall cooperate appeals that may be taken from any judgments or orders entered therein, and shall execute all pleadings, bonds or other instruments, but at the sole expense of SOCIETY, that may be required in order properly to defend and resist any such action or proceeding, and prowith SOCIETY in every way in the defense of any such action or proceeding, and in any perly to prosecute any appeals taken therein.

In the event of the service upon LICENSEE of any notice, process, paper or pleading, under which a claim, demand or action is made, or begun against LICENSEE on account of the rendition of any musical composition contained in the SOCIETY'S repertory but NOT heretofore or hereafter during the term hereof copyrighted or composed by members of SOCIETY, SOCIETY agrees at the request of LICENSEE to cooperate with and assist LICENSEE in the defense of any such action or proceeding, and in any appeals that may be taken from any judgments or orders entered therein.

12. All notices required or permitted to be given by either of the parties to the other hereunder shall be duly and properly given if mailed to such other party by registered United States mail addressed to such other party at its main office for the transaction of business.

IN WITNESS WHEREOF, this agreement has been duly subscribed by SOCIETY and LICENSEE this 20th day 6f September, 1932.



AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS

WM. E. ARNAUD

ISLE OF DREAMS BROADCASTING CORPORATION

72

President By JESSE H. JAY,

(THEATRES)

SOCIETY "Society"), MEMORANDUM OF AGREEMENT between AMERICAN SOCI COMPOSERS, AUTHORS AND PUBLISHERS (hereinafter styled "Socie MARIANNA THEATRES, INC. (hereinafter styled "Licensee"), as follows:

- period of one (1) year commencing the Ritz Theatre in Panama City, 1. Society grants and licensee accepts for a period of one (1) year commencing November 23rd, 1936 a license to publicly perform at the Ritz Theatre in Panama City, Florida, and not elsewhere, non-dramatic renditions of the separate musical compositions copyrighted by members of the Society.
- 2. This license is not assignable nor transferable by operation of law, devolution or otherwise, and is limited strictly to the Licensee and to the premises above named. The license fee herein provided to be paid is based upon the performance of such non-dramatic renditions for the entertainment solely of such persons as may be physically present on or in the premises described, and does not authorize the broadcasting by radio-telephone, transmission by wire or otherwise, of such performances or renditions to persons outside of such premises, and the same is hereby strictly prohibited unless consent of the Society in writing first be had.
- 3. This license shall not extend to or be deemed to include:
- music, revues and ballets) in their entirety, or songs or other excerpts from operas or musical plays accompanied fither by words, pantomime, dance, or visual representation of the work from which the music is taken; but fragments or instrumental selections from such works may be instrumentally rendered without words, dialogue, costume, accompanying dramatic action or scenic accessory, and unaccompanied by any stage action or visual representation (by motion picture or otherwise) of the work of which such music forms a part.
- Any work (or part thereof) whereof the stage presentation and singing rights 3

0

- 4. Licensee warrants and represents to Society that the statements made in the application dated 11-25-36 for this license are true and correct, upon which warranty and representation the license fee herein is fixed. 810 seats.
- 5. Society reserves the right at any time to withdraw from its repertory and from operation of this license, any musical work, and upon any such withdrawal Licensee may immediately cancel this agreement. Either party to this agreement may, at any time, upon giving to the other party thirty days' prior notice in writing, by registered United States mail, terminate this agreement. Upon the termination of this agreement pursuant to any provision of this article "5", there shall be made to the Licensee a pro rata refund of any unearned license fees.
- Society, whenever requested, to furnish a list of all music rendered at the premises hereby licensed, showing the title of each composition, and the publisher thereof.
- 7. Upon any breach or default of any term or condition herein contained Society license, and in event of such cancellation shall remay, upon notice in writing, cancel this license, an fund to Licensee any unearned fees paid in advance.
 - 8. The parties hereto hereby agree that this agreement shall be deemed to be, and the same shall be, extended and renewed from year to year, unless either party, on or before thirty days next preceding the termination of any year, shall give notice in writing to the other by registered United States mail of the desire to terminate the same at the conclusion
- 9. Licensee agrees to pay Society for the license herein the sum of One Hundred and Twenty-One Dollars and Fifty Cents (\$121.50) annually, payable semi-annually in advance in installments of Sixty Dollars and Seventy-Five Cents (\$60.75) each.

IN WITNESS WHEREOF, this agreement has been duly subscribed and scaled by Society and Licensee this 28th day of November, 1936.

In Triplicate



AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS

By WM. E. ARNAUD.
Agent and Attorney in Fact

MARIANNA THEATRES, INC.

A. E. ADAMS

OF

MEMORANDUM OF AGREEMENT between AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS (hereinafter styled "Society"), and THIRTY ONE WEST ADAMS STREET CORPORATION (hereinafter styled "Licensee"), as follows:

- 1. Society grants and licensee accepts for a period of one (1) year commencing December 1, 1936 a license to publicly perform at Carling Hotel, Jacksonville, Florida, and not elsewhere, non-dramatic renditions of the scrarate musical compositions copyrighted by members of the Society.
- 2. This license is not assignable nor transferable by operation of law, devolution or otherwise, and is limited strictly to the Licensee and to the premises above named. The license fee herein provided to be paid is based upon the performance of such non-dramatic renditions for the entertainment solely of such persons as may be physically present on or in the premises described, and does not authorize the broadcasting by radio-telephone, transmission by wire or otherwise, of such performances or renditions to persons outside of such premises, and the same is hereby strictly prohibited unless consent of the Society in writing first be had.
- This license shall not extend to or be deemed to include:
- music, revues and ballets) in their entirety, or songs or other excerpts from operas or musical plays with cal plays accompanied either by words, pantomime, dance, or visual representation of the work from which the music is taken; but fragments or instrumental selections from such works may be instrumentally rendered without words, dialogue, costume, accompanying dramatic action or scenic accessory, and unaccompanied by any stage action or visual representation (by motion picture or otherwise) of the work of which such music forms a part.
- Any work (or part thereof) whereof the stage presentation and singing rights 9
- 4. Society reserves the right at any time to withdraw from its repertory and from operation of this license, any musical work, and upon any such withdrawal Licensee may immediately cancel this agreement. Either party to this agreement may, at any time, upok giving to the other party thirty days' prior notice in writing, by registered United States mail, terminate this agreement. Upon the termination of this agreement pursuant to any provision of this article "4", there shall be made to the Licensee a pro rata refund of any unearned license fees.
- 5. Licensee agrees, upon demand in writing of the Society, upon forms supplied by Society, whenever requested, to furnish a list of all music rendered at the premises hereby licensed, showing the title of each composition, and the publisher thereof.
 - Upon any breach or default of any term or condition herein contained Society may, upon notice in writing, cancel this license, and in event of such cancellation shall refund to Licensee any unearned fees paid in advance.
- 7. The parties hereto hereby agree that this agreement shall be deemed to be, and the same shall be, extended and renewed from year to year, unless either party, on or before thirty days next preceding the termination of any year, shall give notice in writing to the other by registered United States mail of the desire to terminate the same at the conclusion
- 8. Licensee agrees to pay Society for the license herein the sum of Two Hundred and no/100 Dollars (\$240.00) annually, payable in quarterly installments of \$60.00

This contract includes musical performances other than by means of master radio receiving sets in hotel guest rooms for which a separate license is issued.

IN WITNESS WHEREOF, this agreement has been duly subscribed and sealed by Society and Licensee this 8th day of January, 1937.



AUTHORS AND PUBLISHERS By WM. E. ARNAUD

THE CARLING HOTEL

74-76 By CHAS. B. GRINER, Mgr.

BLANK PAGE

[fol. 77] IN UNITED STATES DISTRICT COURT

ORDER CONVENING THREE-JUDGE COURT—Filed February 7, 1938

Having considered the Bill of Complaint and the affidavits of Gene Buck, Walter S. Fischer, Gustave Schirmer, Saul H. Bornstein, Deems Taylor, Anne Paul Nevin and Ella Herbert Bartlett, all duly verified and filed in the above entitled suit, and the motion of the plaintiffs, for a temporary injunction herein, and their request that the same shall be heard and determined by three Judges of whom at least one shall be a Justice of the Supreme Court or a Circuit Judge, and being fully advised of the law and the facts, and it appearing therefrom to be a proper case therefore, now therefore, it is

Ordered, and this does order:

- 1. Plaintiffs' application for a temporary injunction filed herein on February 7, 1938, be and the same is hereby set for hearing before the Court at the Courtroom thereof of the Federal Building at New Orleans, La., at the hour of 10 o'clock in the morning of March 3, 1938;
- 2. That the Honorable Rufus E. Foster, a Judge of the Circuit Court of Appeals for the Fifth Circuit, and the Honorable Louie W. Strum, one of the Judges of the above [fol. 78] entitled Court, be and they are hereby called to my assistance to hear and determine said application for temporary injunction at said time and place; and
- 3. That written notice of the time and place of the hearing on said application for temporary injunction be given to the Honorable Fred Cone, the Governor of the State of Florida, the Honorable Cary D. Landis, Attorney General of the State of Florida, and to such other persons as may be defendants in the suit, at least five (5) days before the date of said hearing.

Done, February 7, 1938.

- . A. V. Long, United States District Judge, Northern
- District of Florida.

4-610-611

[fol. 79] IN UNITED STATES DISTRICT COURT

Motion to Dismiss-Filed March 3, 1938

Come now the Defendants, Cary D. Landis, individually and as Attorney General of the State of Florida, E. Dixie Beggs, Jr., individually and as State Attorney for the First Judicial Circuit of Florida, O. C. Parker, individually, and as State Attorney for the Second Judicial Circuit of Florida, A. K. Black, individually, and as State Attorney for the Third Judicial Circuit of Florida, William A. Hallowes, III, individually and as State Attorney for the [fol. 80] Fourth Judicial Circuit of Florida, J. W. Hunter, individually and as State Attorney for the Fifth Judicial Circuit of Florida, Chester B. McMullen, individually and as State Attorney for the Sixth Judicial Circuit of Florida, Murray Sams, individually and as State Attorney for the Seventh Judicial Circuit of Florida, J. C. Adkins, individually and as State Attorney for the Eighth Judicial Circuit of Florida, Murray W. Overstreet, individually and as State Attorney for the Ninth Judicial Circuit of Florida, L. Grady Burton, individually and as State Attorney for the Tenth Judicial Circuit of Florida, G. A. Worley, individually and as State Attorney for the Eleventh Judicial Circuit of Florida, Roy D. Stubbs, individually and as State Attorney for the Twelfth Judicial Circuit of Florida, J. Rex Farrior, individually and as State Attorney for the Thirteenth Judicial Circuit of Florida, John H. Carter, Jr., individually and as State Attorney for the Fourteenth Judicial Circuit of Florida, Louis F. Maire, individually and as State Attorney for the Fifteenth Judicial Circuit of Florida, "John Doe" and "Richard Roe", by their undersigned Attorneys, and file this their motion to dismiss the bill of complaint heretofore filed herein for the following reasons, to-wit:

1. That the bill does not state facts sufficient to constitute a cause of action against the Defendants or any of them.

1-a. That there is no equity in the bill.

2. That it affirmatively appears from the allegations of the bill of complaint, and the exhibits attached thereto, that the jurisdictional amount of \$3,000.00, exclusive of interest and costs, is not involved in this suit, in that it appears that the suit is brought for the benefit of the members of the American Society of Composers, Authors and Publishers, an unincorporated association; and it does not affirmatively appear that the loss of any member of said society due to the enforcement of Chapter 17807, Laws of Florida, 1937, would amount to the sum of \$3,000.00, the necessary jurisdictional amount.

- 3. That it affirmatively appears from the allegations of the bill of complaint that the bill is fatally ambiguous in failing to show whether the true party in interest is the [fol. 81] American Society of Composers, Authors and Publishers or its members.
- 4. It affirmatively appears from the allegations of the bill of complaint, and exhibits attached thereto, that this suit is not one arising under the Federal copyright laws, and that since the jurisdictional amount has not been shown to exist in each member of the said society, the Court does not have jurisdiction of the cause.
- 5. That it affirmatively appears from the allegations of the bill of complaint, and exhibits attached thereto, that the American Society of Composers, Authors and Publishers, an unincorporated association, cannot suffer any loss due to enforcement of Chapter 17807, Laws of Florida, 1937, due to the fact that it is an unincorporated association of composers, authors and publishers, and that all the proceeds which the said society collects from the licensing for public performances for benefit of the works of its members, and affiliated members, is divided between the members and affiliates, and, therefore, the loss, if any, sustained due to the enforcement of said Florida laws would fall on the members of the Society, and not on the Society itself.
- 6. That it affirmatively appears from the allegations of the bill of complaint, and the exhibits attached thereto that the jurisdictional amount of \$3,000.00 exclusive of interest and costs, is not involved in this suit, because the plaintiffs have not shown the extent of loss or damage they would suffer by reason of the enforcement of said State law, as compared with the amount of profit they would make by the non-enforcement of said law.
- 7. That it affirmatively appears from the bill of complaint, and the exhibits attached thereto, that the plaintiffs have

been guilty of laches, in that they have waited over nine months before bringing this suit to enjoin the enforcement of Chapter 17807, Laws of Florida, 1937.

- 8. That the Act in question, Chapter 17807, Laws of Florida, 1937, seeks by Section 1 thereof to prevent activity within the State of Florida of any combination of a substantial number of the owners or competitors of the copyrights of vocal or instrumental musical compositions when one of its objects is to fix prices or to restrain trade and competition in such musical compositions, or to prevent free compefol. 82] tition among the owners or proprietors thereof, and that all of the provisions contained in Section 1 of said Act are within the powers of this State to enact into law.
- 9. That it affirmatively appears from the allegations of the bill of complaint, and the exhibits attached thereto, that the plaintiffs and each of them are engaged in interstate commerce, and that they are violating the provisions of Title 15 U. S. C. A. Sec. 1 et seq., commonly known as the Sherman Anti-Trust Act, and that, therefore, they have come into this Court with unclean hands, and equity will not grant them any of the relief prayed for therein.
- 10. That it affirmatively appears from the allegations of the bill of complaint, and the exhibits attached thereto, that the plaintiffs are engaged in intrastate commerce within the State of Florida, and that by reason of the unlawful combination through which they are operating they are violating the provisions of Section 1 of Chapter 17807, Laws of Florida, Acts of 1937, as well as the provisions of Chapter 6933, Laws of Florida, 1915, as amended by Chapter 10283, Laws of Florida, 1925, Section 7944-7954, inclusive, C. G. L. 1927, the general laws of Florida, prohibiting combinations or monopolies, such as the plaintiffs are engaged in, and that, therefore, the plaintiffs having come into a court of equity with unclean hands, they are not entitled to any of the relief prayed for in the bill of complaint.
- 11. That it appears from Chapter 17807, Laws of Florida, 1937, that Section 2-A to 2-C, inclusive, in no way conflicts with the provisions of the copyright laws of the United States, (Mar. 4, 1909 c. 320, Sec. 1, 64, 35 Stat. 1075, 1088, Title 17 U. S. C. A.), but assures to the author, composer, publisher or proprietor the protection of the individual

神流、

copyright by requiring persons purchasing the works of the authors, composers, publishers or proprietors to be used for public performance for profit, to pay the amount so designated thereon by the owner of said works.

- 12. That it affirmatively appears that Section 3 of Chapter 17807, Laws of Florida, 1937, which declares unlawful the enforcement within the State of Florida only said contracts of the unlawful combination in reference to copyrighted musical compositions, merely restates the common law and the general statutory law on this ground in force in the State of Florida at the time of the passage of this [fol. 83] Act, as is indicated by Sections 7944-7954, inclusive, C. G. L. 1927, and that it is within the police powers of the Legislature of the State of Florida to so define, prohibit and prevent the enforcement of said illegal contracts.
- 13. That Sections 4-a, 4-b, 5-2, 5-b, and Section 6 of said Chapter 1708, Laws of Florida, 1937, are nothing more than the exercise of a valid police power by the Legislature of the State of Florida to protect persons, firms and corporations within the State of Florida from unlawful collections or exactions of royalties by the plaintiffs through a monopoly agency or affiliates of a monopoly should the monopoly seek to enforce or compel alleged rights to copyrighted music within this State in violation of the statute.
- 14. That Sections 7-a, 7-b and Section 8 of said Chapter 17807, Laws of Florida, 1937, do nothing more than define agencies and representation of such unlawful combination declaring the violation of this Act to be a felony and providing the punishment therefor, all of which definitions and requirements are within the right of the Legislature of the State of Florida to enact into law.
- 14. That Sections 9, 10-a, 10-b, 11-a and 11-b merely provide the procedure of how persons violating the provisions of this Act may be prosecuted, and they guarantee to any such persons the equal protection and due process of law by affording them a fair and impartial hearing before a legally constituted court of this State, and that the provisions contained in said Section are within the legislative powers of the State of Florida to enact into the law.
- 16. That it affirmatively appears from the bill of complaint, and the exhibits attached thereto, that there is a

misjoinder of parties plaintiff contrary to the provisions of Rule No. 26 as adopted by the Supreme Court of the United States, and as set forth in Title 28, Section 723, U. S. C., for the reason that said bill of complaint alleges no joint cause of action in said plaintiffs.

Cary D. Landis, Attorney General; Tyrus A. Norwood, Assistant Attorney General; Andrew W. Bennett, Lucien H. Boggs, Of Counsel for Defendants.

[fol. 84] IN UNITED STATES DISTRICT COURT IN AND FOR THE NORTHERN DISTRICT OF FLORIDA, GAINESVILLE DIVISION

GENE BUCK, Individually and as President of the American Society of Composers, Authors And Publishers, etc., et al., Complainants,

VS.

Cary D. Landis, Individually and as Attorney General of the State of Florida, et al., Defendants

MEMORANDUM OPINION—Filed April 5, 1938

Per CURIAM:

The Complainants, American Society of Composers, Authors and Publishers, an unincorporated association organized and existing under the laws of the State of New York, Gene Buck, individually and as President of the American Society of Composers, Authors and Publishers, and others filed their bill of complaint on the 7th day of February 1938 against the Attorney General of the State of Florida and a number of State Attorneys, in which bill it is sought to enjoin the defendants from enforcing the provisions of an Act of the Florida Legislature passed during the Session of 1937, which law declares any combination of persons, (fol. 355) firms, or corporations which determine the amount of money to be paid to it or to its members for the purpose of rendering privately or publicly for profit copyrighted vocal or instrumental musical com-[fol. 85] positions when such combination is composed of a substantial number of all musical composers, copyright owners or their heirs, successors or assigns, to be an un-

lawful monopoly and its purpose would be in restraint of trade. It makes it unlawful for authors, composers, proprietors, publishers or owners of copyrighted musical compositions, when the members, stockholders or interested parties constitute a substantial number of persons, firms or corporations within the United States who own or control copyrighted musical compositions, to form any organization either in Florida or elsewhere if one of the objects of the organization is the determination of license fees required for the use of copyrighted musical compositions for profit in Florida, for the purpose of preventing free competition between different copyright owners. There are penalty provisions applying where any attempt is made to collect license fees by the owners of copyright and requiring authors, composers and publishers to specify on any published musical composition prepared for use in Florida the selling price of such composition. Other provisions seek to limit the rights of copyright owners or licensees to control the sale, reproduction or use of their products in the State of Florida.

The bill alleges that the enforcement of this Act will violate rights granted to them by the copyright Act of Congress; that it is in violation of the Federal Constitution and impairs the terms of certain existing contracts held by these plaintiffs.

The cause is before this Court upon application for interlocutory injunction; upon the bill of complaint, affidavits filed therewith and upon motion to dismiss the bill of complaint.

It is alleged that the defendants have threatened to and will enforce the provisions of this Act to the irreparable injury of plaintiffs unless such injunction order is issued.

It appearing to the Court that plaintiffs have shown that great damage will be inflicted upon them if preliminary injunction is not granted, and that there is grave doubt of the constitutionality of the Act;

It is considered by the Court that an order be entered granting such interlocutory injunction and that the motion to dismiss the bill be denied.

Rufus E. Foster, Circuit Judge. Louie W. Strum, District Judge. A. V. Long, District Judge. [fol. 86] IN UNITED STATES DISTRICT COURT IN AND FOR THE NORTHERN DISTRICT OF FLORIDA, GAINESVILLE DIVISION

GENE BUCK, Individually and as President of the American Society of Composers, Authors and Publishers, etc., et al., Complainants,

VB.

Cary D. Landis, Individually and as Attorney General of the State of Florida, et al., Defendants

ORDER GRANTING MOTION FOR INTERLOCUTORY INJUNCTION, ETC.—Filed April 5, 1938

This cause coming on to be heard and the same having been argued by Counsel for the respective parties, and the Court having inspected the record and the briefs filed;

It is ordered:

1st. That the application for interlocutory injunction be and the same is granted.

2nd. That the defendants, Cary D. Landis, individually and as Attorney General for the State of Florida; E. Dixie Beggs, Jr., individually and as State Attorney for the First Judicial Circuit of Florida; O. C. Parker, Jr., individually and as State Attorney for the Second Judicial Circuit of Florida; A. K. Black, individually and as State Attorney for the Third Judicial Circuit of Florida; Williams A. Hallowes, III, individually and as State Attorney for the Fourth Judicial Circuit of Florida; J. W. Hunter, individually and as State Attorney for the Fifth Judicial Circuit of Florida; Chester B. McMullen, individually and as State Attorney for the Sixth Judicial Circuit of Florida; Murray Sams, individually and as State Attorney for the Seventh Judicial Circuit of Florida; J. C. Adkins, individually and as State Attorney for the Eighth Judicial Circuit of Florida; Murray W. Overstreet, individually and as State Attorney for the Ninth Judicial Circuit of Florida: L. Grady Burton, individually and as State Attorney for the Tenth Judicial Circuit of Florida; G. A. Worley, individually and as State Attorney for the Eleventh Judicial Circuit of Florida; Roy D. Stubbs, individually and as State Attorney for the Twelfth Judicial Circuit of Forida; J. Rex Farrior, individually and as State Attorney for the Thirteenth [fol. 87] Judicial Circuit of Florida; John H. Carter, Jr.,

individually and as State Attorney for the Fourteenth Judicial Circuit of Florida; Louis F. Maire, individually and as State Attorney for the Fifteenth Judicial Circuit of Florida; and each of them individually and in their respective capacity as officials of the State of Florida, charged by said State Statute with the enforcement of the provisions thereof, be enjoined and restrained until the further order of this Court from bringing directly or indirectly any proceeding at law or in equity for the purpose of enforcing said State Statute against the complainants and other similarly situated, representatives, employees, agents or any of them, and from interferring with all existing contracts entered into by the complainants and others, including the Society and citizens and residents of the State of Florida, and from threatening to enforce against any citizen or resident of the State of Florida the penalties of said Statute in the event such citizen and resident desires to carry out their contracts with the American Society of Composers, Authors and Publishers, or complainants, or others similarly situated, and from prosecuting criminally the complainants, their representatives or agents or any of them or others similarly situated for doing any act or thing to detect infringements and to enforce their respective rights under the copyright Act in the Federal Court of the State of Florida or elsewhere, and generally from doing any act or thing to carry out or enforce any of the provisions of said State Statute.

3rd. That the motion made by the defendants to dismiss the bill of complaint be and the same is denied.

4th. That the defendants be given thirty (30) days from the date hereof to answer.

This order is made conditional upon the plaintiffs filing herein within thirty (30) days a bond in the sum of five thousand (\$5,000.00) Dollars conditioned upon the payment to the defendants of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined by this order; said bonds to be approved by the Clerk of the United States Court for the Northern District of Florida.

Done and ordered this the 4 day of April, A. D. 1938.

Rufus E. Foster, Circuit Judge. Louie W. Strum,

District Judge. A. V. Long, District Judge.

[fol. 88] IN UNITED STATES DISTRICT COURT

Findings of Fact and Conclusions of Law—Filed May 17, 1938

This suit having been duly commenced on February 7th. 1938, by filing a subpoena and bill of complaint in this [fol. 89] Court, and service of copies thereof having been made upon all the defendants (except "John Doe" and "Richard Roe"), and the complainants having moved for a temporary injunction, and due notice of said motion having been made upon the defendants herein as well as upon the Governor and Attorney General of the State of Florida, and the defendants, State Attorneys, having appeared herein generally (with the exception of the defendants "John Doe" and "Richard Roe"), and the defendants having duly moved to dismiss the complaint and to deny the motion for temporary injunction; and all of said motions having duly come on for argument and having been heard on March 3rd, 1938, at the Federal Courthouse in New Orleans, Louisiana, this Court hereby makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

- 1. At the 1937 Session of the Legislature of Florida there was passed by said Legislature a Bill designated as Chapter 17807, Senate Bill No. 679, and said Bill was signed by the Governor of that State on June 9th, 1937, and made effective immediately. Said statute is referred to as the "State Statute" hereinafter; a copy is hereto annexed.
- 2. The complainant American Society of Composers, Authors and Publishers (hereinafter referred to throughout these findings as the "Society") was at all the times hereinafter mentioned and still is an unincorporated association duly organized and existing under the laws of the State of New York, and has its principal place of business in the Borough of Manhattan, City and State of New York, in the Southern District of New York. The membership of the Society constitutes a substantial number of persons, firms and corporations within the United States who own or control copyrighted vocal or instrumental musical compositions, to-wit: a membership of one thousand, consisting of authors, composers and publishers of musical works; said

Society has contracts now valid and subsisting between it and similar societies situated in the countries of the civilized world, which foreign societies have a membership of approximately forty-four thousand and under which contracts the Society licensed to users of music within the United States, including the State of Florida, until the enactment of the State Statute hereinafter mentioned, the [fol. 90] right to publicly perform for profit all of the copyrighted musical compositions controlled by said foreign societies, as well as by the Society.

- 3. All of the complainants are citizens of the United States and residents of the State of New York, except complainant, Anne Paul Nevin, who is a resident of the State of Maine; and the defendants are citizens and residents of the State of Florida, and officers of the State of Florida, duly elected, appointed and qualified, empowered, directed and charged by the said state statute with the duty of enforcing the criminal and civil provisions thereof.
- 4. This action is a suit in equity arising under the Constitution and laws of the United States and the matter in controversy exceeds \$3,000 exclusive of interest and costs.
- 5. Under mutual working arrangements with societies in the foreign countries, the Society has the exclusive right to and does license within the United States, the public performance for profit of the musical compositions copyrighted by all the members of said respective foreign societies, and said foreign societies have the exclusive right to, and do license within the territorial limits of their respective countries, the public performances for profit of the musical compositions copyrighted by members of the Society. Under such arrangements between the Society and said foreign societies, the rights vested in such foreign societies with respect to the licensing of their performing rights in the United States are not conditioned upon and are entirely independent from the sale of copies of sheet music and the price fixed therefor. The right to perform the musical compositions embraced in the catalogues of such foreign societies are included in the blanket licenses issued to individual licensees by the Society in the United States. Such foreign societies represent 44,000 members who are scattered throughout the world; they are not required to file copies of their respective musical composi-

tions in order to enjoy copyright protection in the United States under the Treaties, Proclamations and United States Laws aforesaid.

6. Because of the provisions of Section 1 (e) of the Copyright Act of 1909, as amended, under which any manufacturer of parts of instruments serving to reproduce [fol. 91] mechanically a musical work may manufacture such a reproduction of a copyrighted work upon payment to the copyright proprietor of a royalty of two cents on each such part manufactured. Many thousands of the copyrighted musical compositions owned and published by complainants, as well as others similarly situated, have been recorded by manufacturers of phonograph records, music rolls, electrical transcriptions and other parts of instruments serving to reproduce mechanically such copyrighted musical compositions without the express consent of the copyright proprietors, including complainants. The copyright Act does not impose any other duty upon such manufacturers, except the payment of two cents for each record, and complainants have not received any other moneys except the payment of such two cents, and have no right to demand any further sums from such manufacturers; and complainants, and others similarly situated, have no control over the manner of sale and disposition of such phonograph records, music rolls or electrical transcriptions of their said copyrighted musical works, and they cannot compel the manufacturers thereof to affix any price upon said phonograph records, music rolls or electrical transcriptions, or to collect any price for the public performance for profit thereof, or if collected, to remit or give to them the sums so collected for the public performance for profit thereof.

7. Complainants will be able to license users of their music in the State of Florida without doing any act in said State, but unless the injunction prayed for is granted, complainants will be unable to issue any licenses from without the State of Florida without incurring the penalties of said State Statute. The copyrighted works of the complainants and of all the other members of the Society and of the affiliated societies are being, and have been constantly performed in the State of Florida and each and every county and district therein, and will continue to be performed therein.

8. Said State Statute is class legislation; it is aimed only at proprietors of musical copyrights and no other copyrights, and it exempts the performance of musical works which are not copyrighted under the laws of the United States but which are protected at common law. A great many forms of copyright and kinds of copyrighted [fol. 92] works are presently and constantly dealt in, licensed, sold and otherwise made available within the State of Florida, such as motion pictures, dramas, newspapers, magazines, books, and periodicals, none of which are affected by the said State Statute.

9. Said State Statute attempts to vest in the courts of Florida the rights to determine the ownership of complainants' copyrights without properly securing jurisdiction over complainants, who are not residents or domiciled within the State of Florida, and are not doing business therein, and who have no agency within said State and have no property within said State which has a situs.

10. Said State Statute is in its terms so drastic and the penalties attached to the violation of the terms thereof are so great that neither complainants nor others similarly situated may continue to grant licenses to users of music within the State of Florida or even to users of music without such State if the public performance for profit of such music may be reproduced or performed within such State. There are fourteen judicial circuits in the State of Florida, in each of which there are establishments publicly performing for profit the copyrighted musical compositions of members of the Society, and the foreign societies with which the Society has reciprocal arrangements; and if complainants attempt to issue licenses or collect from licensees or attempt to detect infringements of thir copyrighted works in said counties they will be subjected to a multiplicity of suits and prosecutions and unless defendants are restrained complainants will be unable to secure any compensation for the public performance for profit of their respective copyrighted musical compositions by means of rebroadcasting or by means of personal performance of artists, singers, musicians, orchestras, bands, actors, loud speakers, radio, sound production or reproduction, apparatus or instrumentalities or electrical transcriptions, or by any other means of rendition whatsoever within the State of Florida from any radio broadcasting, radio receiving or

radio rebroadcasting station, or in any theatre or motion picture house located in such State; complainants and others similarly situated will be unable to enforce any contracts made between them or on their behalf by the Society with residents or citizens of such State; complainants and others [fol. 93] similarly situated, as well as the Society, were compelled from the effective date of the State Statute, until the date of the granting of temporary injunction, herein, to desist from licensing the public performance for profit of their copyrighted musical compositions in such State and were deprived during such period of all sources of revenue therefrom, and were denied the privileges granted to them by the Copyright Act; and the Society was compelled to desist from enforcing collection of payments under existing contracts between it and users during such period and was denied liberty of contract and was compelled to desist from investigating infringements of the copyrights of complainants, and other members of the Society and its affiliated societies by means of the public performance for profit of their respective copyrighted musical compositions; and complainants would continue to suffer as aforesaid but for the granting of the injunction herein; and complainants and the Society and its affiliated societies, were hindered, delayed and impeded in enforcing their rights and remedies under the Copyright Act in the Federal Courts located in the State of Florida for infringements committed by users within such State by means of public performances for profit of the copyrighted musical compositions aforesaid, all because of the drastic provisions of the said State Statute and the numerous penalties, civil and criminal, to which the complainants will be liable in the event of any violation of said State Statute; and complainants and others similarly situated were unable to detect and sue for infringement of their copyrighted musical works within the State of Florida during such period.

11. Complain-ts have no adequate remedy at law and are relievable only in this Court of Equity, and if complainants were not afforded the equitable relief prayed for herein but were required to resist criminal prosecutions and other suits or proceedings instituted under the State Statute, it would result in such a multiplicity of suits and entail such delay and so jeopardize and injure complainants in their persons and property as to make the remedy at law grossly inadequate.

CONCLUSIONS OF LAW

I. The bill of complaint states facts sufficient to constitute a cause of action against each and every one of the defendants

[fol. 94] II. The State Statute is not a reasonable exercise of the police power of the State of Florida, and the penalties and confiscatory provisions provided for therein are not reasonably necessary to meet any alleged evil; enactment of the State Statute was not necessary to protect, nor does it serve the public interest of the State of Florida; the object, purpose and effect of the Statute is to take the copyrighted musical compositions of the complainants, and others similarly situated, for a private purpose, to-wit; to benefit the 367 users within the State of Florida; the said State Statute discriminates against, and in fact, confiscates the complainants' copyrighted musical compositions as well as those of others similarly situated; it is contrary to and hinders carrying out the purpose of Article 1, Section 8 of the Constitution of the United States, and will deter composers, authors and publishers from securing copyright registration of their works.

III. The State Statute is an invasion of complainants' constitutional rights in the following respects:

- (a) It interferes with and destroys the pattern of the copyright Law by which Congress has endeavored to carry out the purpose of the Constitution to insure uniformity and certainty in the field of copyright.
- (b) It denies to complainants equal protection of the laws, and by making them presumptively guilty of the criminal provisions therein denies to the complainants due process of law.
- (c) It impairs obligations of contracts entered into between complainants and 367 users of music within the State of Florida, and contracts between members of the Society and the Society, and between the Society and similar societies operating in foreign countries, and contracts between writers and composers and their respective publishers.
- (d) It interferes with complainants' liberty of contract in the State of Florida and elsewhere.

(e) It deprives complainants of their right of free access to the Federal Courts to maintain suits for infringement for the unlawful public performance for profit of their copyrighted musical compositions.

[fol. 95] IV. The said State Statute is vague, uncertain and indefinite and fails to apprise complainants, and others similarly situated of what acts they may omit or commit which would constitute a crime under said State Statute.

V. The said State Statute subjects complainants to a multiplicity of suits by each of the 367 users within the State of Florida with whom they have contracts, by each of the State Attorneys in the State of Florida, and by the Attorney General of said State.

VI. The penalties, civil and criminal, and the forfeitures provided for in said State Statute are harsh, oppressive and unreasonable, and such penalties and forfeitures are cruel and unusual.

VII. The said State Statute violates Article I. Sections 8-9, and 10, Article III, Section 2, Article IV, Section 2 and Article VI, Section 2 of the Constitution of the United States and the Fourteenth Amendment to the Constitution of the United States.

VIII. Complainants have no adequate remedy at law and are relievable only in this Court of Equity, and if complainants are not afforded the equitable relief prayed for in the bill of complaint, but are required to resist, when criminal prosecutions and other suits or proceedings are instituted under said State Statute, it will result in such a multiplicity of suits and entail such delay and so jeopardize and injure complainants in their persons and property as to make the remedy at law grossly inadequate, and unless an injunctional order is issued complainants will be irreparably damaged.

IX. Complainants are entitled to an injunction enjoining and restraining, until the further order of this Court, the defendants and each of them individually and in their capacity as officials of the State of Florida, charged by said State Statute with the enforcement of the provisions thereof, from bringing directly or indirectly any proceeding at law or in equity for the purpose of enforcing said State Statute against the complainants and others similarly situated, representatives, employees, agents or any of them,

and from interfering with all existing contracts entered into by the complainants and others, including the Society [fol. 96] and citizens and residents of the State of Florida, and from threatening to enforce against any citizen or resident of the State of Florida the penalties of said Statute in the event such citizen and resident desires to carry out their contracts with the American Society of Composers, Authors and Publishers, or complainants, or others similarly situated, and from prosecuting criminally the complainants. their respresentatives or agents or any of them or others similarly situated for doing any act or thing to detect infringements and to enforce their respective rights under the Copyright Act in the Federal Court of the State of Florida or elsewhere, and generally from doing any act or thing to carry out or enforce any of the provisions of said State Statute.

X. That a bond in the sum of \$5,000 conditioned upon the payment to defendants of such costs and damages as may be incurred or suffered by any party found to have been wrongfully enjoined by this order, will adequately protect defendants against any injury that may be suffered in the event that the injunction pendente lite entered herein shall not be made permanent.

XI. The State Statute constitutes an attempt to restrict and to regulate the right of complainants to the full enjoyment of the exclusive rights granted them by the laws of the United States, generally known as the Copyright

Laws.

XII. That the motion to dismiss the complaint be denied.

XIII. That this Court has jurisdiction of this suit.

XIV. That the application for interlocutory injunction be and the same is granted.

Dated at Gainesville, Florida, this May 17, A. D. 1938.
Rufus E. Foster, United States Circuit Judge. Louie
W. Strum, United States District Judge. A. V.
Long, United States District Judge.

Exhibit "E" (Florida Statute—Senate Bill No. 679) omitted. Printed side page 64, ante.

[fol. 97] SUPREME COURT OF THE UNITED STATES

No. 276-, October Term 1938

ORDER SUBSTITUTING GEORGE COUPER GIBBS, ATTORNEY GENERAL, FOR CARY D. LANDIS, etc., deceased—Filed May 30, 1939

On Consideration of the motion of the appellees to substitute George Couper Gibbs, individually and as Attorney General of the State of Florida, as a party appellant in the place and stead of Cary D. J. andis, deceased,

It Is Ordered by this Court that the said motion be, and the same is hereby, granted, and that the cause be so continued and maintained.

October 10, 1938.

A true copy

Test: Charles Elmore Cropley, Clerk of the Supreme Court of the United States, by /s/ Hugh W. Barr, Deputy. (Seal of the Supreme Court of the United States.)

[fol. 98] IN UNITED STATES DISTRICT COURT

SUPPLEMENTAL BILL OF COMPLAINT-Filed May 31, 1939

The complainants, Gene Buck, individually and President of the American Society of Composers, Authors and Publishers, Carl Fischer, Inc., G. Schirmer, Inc., Irving Berlin, Inc., Deems Taylor, Oley Speaks, William J. Hill, Anne Paul Nevin, Ella Herbert Bartlett and Jane Sousa, by their undersigned counsel, bring this their supplemental bill of complaint herein against George Couper Gibbs, individually and as Attorney General of the State of Florida, and the other defendants named in the caption hereinabove, and say:

1. Since the filing of the original bill of complaint herein, certain material facts have occurred, as are hereinafter alleged.

- 2. The original complaint herein included as a defendant Cary D. Landis, individually and as Attorney General of the State of Florida, who has since departed this life, as will be more fully hereinafter set forth.
- 3. On the 3rd day of March, 1938, this cause came on for hearing before a Statutory Three-Judge Court, upon the application of the complainants for an interlocutory injunction, and the motion of the defendants to dismiss the bill of complaint. On the 4th day of April, 1938, the Court entered an order granting the application for an interlocutory injunction, enjoining the defendants from enforcing the State Statute described in said bill of complaint, to wit, Chapter 17807, Laws of Florida, 1937, General Laws, Vol. 1, pp. 204-214, inclusive, and denying the motion of [fol. 99] the defendants to dismiss the bill of complaint.
- 4. On the 25th day of April, 1938, the defendants petitioned for the allowance of an appeal from said order of April 5, 1938, to the Supreme Court of the United States. On August 15, 1938, the defendants other than George Couper Gibbs, filed their record on appeal and docketed such appeal in the United States Supreme Court, which said appeal was allowed, and is now pending.
- 5. Thereafter, on the 10th day of May, 1938, the defendant, Cary D. Landis, who was named a party defendant in said action, individually and as Attorney General of the State of Florida, departed this life, and on the 16th day of May, 1938, George Couper Gibbs became, and is now, the duly appointed, qualified and acting Attorney General of the State of Florida. Said George Couper Gibbs is a citizen and resident of the State of Florida.
- 6. On August 15, 1938, the above named defendants, other than George Couper Gibbs, as appellants, filed in the United States Supreme Court a "Suggestion of Death" of Cary D. Landis, deceased.
- 7. During the lifetime of Cary D. Landis, deceased, he was represented by Tyrus A. Norwood as his assistant, who at all times acted on his behalf and under his direction. At all times since the appointment of said George Couper Gibbs, the said Tyrus A. Norwood has continued to act under the direction of said George Couper Gibbs,

with the same effect and in the same manner as he acted for the late Cary D. Landis, since the enactment of the said State Statute.

8. The late Cary D. Landis through his said assistant, [fol. 100] Tyrus A. Norwood, threatened to enforce the State Statute and the penalties thereof against complainants if they should violate or attempt to violate any of the provisions thereof, and more particularly threatened to prosecute complainants thereunder should they attempt to sue for infringement of their copyrights in any Federal Court in the State of Florida. Such threat was made in open court on the application for interlocutory injunction, and by the following letter written on March 7, 1938:

"State of Florida
"Office of the Attorney General
"Tallahassee

"March 7, 1938.

"Honorable Rufus E. Foster,
Judge, United States Circuit Court of Appeals,
New Orleans, Louisiana.

"Re: GENE BUCK et al. vs. STATE OF FLORIDA, et al.

"DEAR JUDGE FOSTER:

"Since returning from New Orleans I have been thinking that a statement I made before you in the argument of the above case to the effect that 'if the plaintiffs in this case sued for an infringement of their copyrights in the Federal Courts within the State of Florida, that the Attorney General and State's Attorneys would not prosecute them', was not absolutely clear.

"In order to be fair to the Court, I would like to state that what I meant by the above remark was that the Attorney General and the State's Attorneys of this State would not prosecute any of the individual complainants if they brought suit in the Federal Courts of this State against persons residing within the State for infringement of copyrights, but if the Society known as the American Society of Composers, Authors and Publishers should bring suit in the Federal Court for infringement, or a suit on any of the licenses which it has issued, the Attorney General

and State's Attorneys would be compelled to prosecute it under the provisions of Section 1 of the Act, regardless of whether the suit was brought in the State or Federal Courts.

[fol. 101] "Yours very truly,

"(Signed) Cary D. Landis, Attorney General. By Tyrus A. Norwood, Assistant Attorney General.

"Tan-a

"CC. Hon. A. V. Long, Gainesville, Florida. "Hon. Louis W. Strum, Jacksonville, Florida.

"Hon. Frank Wideman, West Palm Beach, Florida."

- 9. Upon information and belief, said Tyrus A. Norwood has been instructed by said George Couper Gibbs to act in his capacity as Assistant Attorney General in appearing for the State's Attorneys in this action; the purpose and object of the appearance of said Tyrus A. Norwood in this action since the death of the late Cary D. Landis, has at all times been to have the interlocutory injunction heretofore entered herein vacated so that the said George Couper Gibbs and the said Tyrus A. Norwood and the said defendant State's Attorneys will be free to enforce the terms and provisions of the State Statute against the complainants herein.
- 10. Said George Couper Gibbs directly and through his assistant, Tyrus A. Norwood, has adopted and continue's and threatens to adopt and continue the action of his predecessor Cary D. Landis, deceased, in enforcing the State Statute, which is in violation of the Constitution of the United States; upon information and belief, said George Couper Gibbs, individually and as an official charged with the duties of enforcing said State Statute will enforce said State Statute in each and all of its terms, and the whole thereof, and particularly against these complainants and others similarly situated, individually and as members of the Society, in the event that such complainants and others similarly situated refused to accept or submit to a system of compulsory licensing; and said George Couper Gibbs will enforce the penal and confiscatory provisions of such [fol. 102] Statute against complainants and others similarly situated in the event complainants and others similarly situated attempt to enforce the existing contracts between themselves and the Society and between the Society and citizens and residents of the State of Florida;

or license or attempt to license persons, firms or corporations to publicly perform outside of the State of Florida musical compositions, which performances may be reproduced and reperformed within the State of Florida; or enter into license agreements without the State of Florida with residents or citizens of that State for the right or license to perform publicly for profit the musical compositions of the complainants and others similarly situated within the State of Florida; or enter into license agreements within the State of Florida with persons, firms or corporations, residents or citizens of that State, for the purpose of licensing them to publicly perform for profit the musical compositions of complainants and others similarly situated within or without the State of Florida; or take any means to detect infringements of their copyrighted musical works within the State of Florida; or bring any suits for infringement of their copyrights in their respective compositions by means of public performances for profit in the Federal Courts within or without the State of Florida; or fail or refuse to submit to the jurisdiction of the State Courts of Florida; and said George Couper Gibbs has threatened in the event of the aforesaid contingencies, or any of them, to enforce the penalties provided for in said State Statute, and to proceed to prosecute complainants and others similarly situated, their employees and agents, criminally, for an alleged violation of said Statute.

11. There is a substantial need for continuing and maintaining this suit against said George Couper Gibbs, as well as against defendant State's Attorneys.

[fol. 103] Wherefore, the complainants pray:

- 1. That a supplemental writ of subpoena may issue to the said George Couper Gibbs, individually and as Attorney General of the State of Florida, made a party defendant hereto, requiring him to answer the bill of complaint and this supplemental bill of complaint, fully and truthfully, but not on oath, an oath being hereby waived.
- 2. That said George Couper Gibbs, individually and as Attorney General of the State of Florida, be enjoined and restrained by temporary and permanent order of injunction of this Court, from bringing, directly or indirectly,

017

and from permitting to be brought, directly or indirectly, any proceeding at law or in equity for the purpose of enforcing said State Statute, against the complainants and others similarly situated, representatives, employees, agents or any of them, and from interfering with all existing contracts entered into between complainants and others, including the Society and citizens and residents of the State of Florida, and from threatening to enforce against any citizens or residents of the State of Florida, the penalties of said Statute in the event such citizens and residents desire to carry out their contracts with Society or complainants and others similarly situated, and from prosecuting criminally the complainants, their representatives or agents. or any of them, or others similarly situated, for doing any act or thing to detect infringement and to enforce their respective rights under the Copyright Act in the Federal Courts of the State of Florida or elsewhere, and generally, from doing any act or thing to carry out or enforce any of the provisions of said State Statute; and that an order to show cause issue herein upon the application of the complainants, directed to the above named defendants, and each [fol. 104] of them, requiring them to show cause why a temporary injunction against said George Couper Gibbs, individually and as Attorney General of the State of Florida, should not issue as prayed for herein.

- 3. That said State Statute, and each and every part and section thereof, be declared, as to said George Couper Gibbs, individually and as Attorney General of the State of Florida, to be unconstitutional, illegal and void, and that a perpetual injunction be issued restraining the enforcement of said State Statute, and each and every part and section thereof, by said George Couper Gibbs, individually and as Attorney General of the State of Florida, as hereinabove prayed for.
- 4. That further and general relief be granted as the nature of the complainants' case may require, or to equity may seem just and proper.

Wideman Wardlaw & Caldwell, Solicitors for Complainants.

Frank J. Wideman, Of Counsel.

[fol. 105] Duly sworn to by Gene Buck. Jurat omitted in printing.

[fol. 106] IN UNITED STATES DISTRICT COURT

MOTION TO DISMISS BILL AND SUPPLEMENTAL BILL OF COMPLAINT—Filed June 6, 1939

Defendants move the Court to dismiss the bill of complaint and supplemental bill of complaint herein upon the ground that since the institution of this suit Sections 2-A, 2-B, and 6 of Chapter 17807, Laws of Florida, 1937 (the statute attacked by said bill and supplemental bill) have been repealed by House Bill 1103, duly enacted by the Legislature of Florida at the 1939 Session; and that with those sections repealed, said statute is patently within the police power of said State.

(S.) Geo. Couper Gibbs, Attorney General; Tyrus A. Norwood, Assistant Attorney General; Lucien H. Boogs, Andrew W. Bennett, Attorneys for the

Defendants.

[fol. 107] IN UNITED STATES DISTRICT COURT

Answer to Bill of Complaint and Supplemental Bill of Complaint—Filed June 19, 1939

Defendants, for answer to the original bill of complaint and supplemental bill of complaint herein, jointly and severally say—subject to the motion to strike portic as of the original bill of complaint filed co-temporaneously herewith, each paragraph of this answer referring to the correspondingly numbered paragraph of the original bill of complaint or of the supplemental bill of complaint as the case may be.

- A. Answer to Original Bill of Complaint:
- 1. Answering paragraph 1, the defendants admit the allegations thereof to be true.
- 2. Answering paragraph 2, the defendants are without knowledge as to the allegations thereof.
- 3. Answering paragraph 3, the defendants admit the allegations thereof to be true.
- 4. Answering paragraph 4, the defendants admit the allegations thereof to be true.

- 5. Answering paragraph 5, the defendants allege that since the filing of said bill, to-wit, on May 10, 1938, Cary D. Landis, originally named as a party defendant to this cause, [fol. 108] individually and as Attorney General of the State of Florida, departed this life, and that on May 16, 1938, George Couper Gibbs became and is now the duly appointed, qualified and acting Attorney General of the State of Florida; that there are no such persons as the alleged defendants, John Doe and Richard Roe, who are charged with the enforcement of the statute mentioned in said paragraph. The remaining allegations of said paragraph are admitted to be true.
- 6. Answering paragraph 6, the defendants deny the allegations thereof.
- 7. Answering paragraph 7, the defendants are advised that the allegations thereof constitute mere matters of law to which they are not required to make factual reply; but if the Court should determine otherwise, the defendants deny each and every the allegations of said paragraph.
- 8. Answering paragraph 8, the defendants admit that each of the publisher plaintiffs has secured for its respective corporation the ownership of the copyright in many thousands of musical compositions. As to the remaining allegations of said paragraph, the defendants are without knowledge.
- 9. Answering paragraph 9, the defendants admit the allegations thereof to be true.
- 10. Answering paragraph 10, the defendants admit that plaintiff Gene Buck wrote the lyrics of many musical compositions and that from time to time he entered into contracts with various music publishers pursuant to which [fol. 109] such publishers procured copyright in such compositions. As to the remaining allegations of said paragraph the defendants are without knowledge.
- 11. Answering paragraph 11, the defendants admit that plaintiff Deems Taylor composed the two musical compositions mentioned in the first clause of said paragraph and entered into a contract for the publication thereof, copy of which is attached to the bill as Exhibit A. As to the remaining allegations of said paragraph the defendants are without knowledge.

- 12. Answering paragraph 12, the defendants admit that the plaintiff Oley Speaks composed the music for many musical compositions and entered into contracts for the publication thereof with the plaintiff G. Schirmer, Inc., a music publisher, and that said publisher secured copyrights in said compositions. As to the remaining allegations of said paragraph the defendants are without knowledge.
- 13. Answering paragraph 13, the defendants admit that the plaintiff William J. Hill has entered into contracts for the publication of musical compositions composed by him with Shapiro, Bernstein & Co., music publishers, who has secured copyrights of said compositions. As to the remaining allegations of said paragraph the defendants are without knowledge.
- 14. Answering paragraph 14, the defendants admit that plaintiff Anne Paul Nevin is the widow of Ethelbert Nevin, who wrote and composed the musical compositions mentioned in the first clause of said paragraph; that plaintiff [fol. 110] Ella Herbert Bartlett is the daughter of Victor Herbert, who wrote and composed musical works alleged to have been composed by him; that plaintiff Jane Sousa is the widow of John Phillip Sousa, who wrote and composed the musical works alleged to have been composed by him. As to the remaining allegations of said paragraph, the defendants are without knowledge.
- 15. Answering paragraph 15, the defendants are without knowledge as to the allegations thereof; that none of the plaintiffs and none of the respective husbands and fathers of the plaintiffs mentioned in paragraph 14 prior to 1917 received any compensation for the public performance for profit of the musical compositions respectively owned, published, copyrighted, written or composed by them; and are without knowledge as to the allegations that users of musical compositions throughout the country refused to recognize such right in the plaintiffs or to pay any royalties for public performance thereof for profit; and are without knowledge as to the allegation that users of music throughout the country publicly performed for profit such musical compositions without payment of royalties; and are without knowledge as to the allegations to the effect that the users of music were organized into powerful trade associations who employ counsel to defend them against claims of

infringement for unauthorized public performance of the musical works of plaintiffs and others similarly situated, and that such associations offered to defend infringers who were not members of their respective associations. The remaining allegations of said paragraph are denied.

[fol. 111] 16. Answering paragraph 16, the defendants admit that the plaintiff has encountered tremendous opposition on the part of organized groups of users of music throughout the country and allege that such opposition has been primarily due to the monopolistic price-fixing activities of the Society as disclosed in the bill of complaint herein and in this answer. It denies that the Society has licensed establishments throughout the country to publicly perform for profit the musical compositions of its members upon fair and reasonable license fees and alleges that such license fees have been imposed through the monopolistic power of the Society upon an unfair and unreasonable basis. As to the remaining allegations of said paragraph, the defendants are without knowledge.

- 17. Answering paragraph 17, the defendants admit the allegations thereof to be true.
- 18. Answering paragraph 18, the defendants admit the allegations thereof to be true.
- 19. Answering paragraph 19, the defendants admit that the respective business and occupations of the individual plaintiffs are lawful ones, but deny that the business of the plaintiff Society or that of its members in combination is a lawful one, and allege that because of their monopolistic price-fixing activities the business of said Society and that of its members in combination is unlawful and subject to such prohibition as is afforded by the Florida statute complained of in the bill. The remaining allegations of said paragraph are matters of law which the defendants are advised it is unnecessary for them to answer.

[fol. 112] 20. Answering paragraph 20, the defendants deny that the users of music have uniformly objected to dealing with individual copyright owners for the licensing of the public performance for profit of particular musical compositions; deny that the rights granted by the Society are of great value to the users and deny that the system of blanket licenses conferred by the Society performs a useful service for the users; and to the contrary thereof allege that

the price-fixing monopolistic activities of the Society are detrimental to the users of music in the State of Florida. Defendants deny that the individual plaintiffs have not the resources, funds, organization or ability to protect their copyrighted works against infringement by unauthorized performance for profit within the State of Florida in their individual capacity; deny that the plaintiffs have been compelled to unite as they have done in the organization of the Society for the purpose of preventing such infringement, or that their rights cannot be enforced by the individual plaintiffs without such combination. They deny that if the individual plaintiffs created an agency within the State of Florida to protect them against such infringements, the cost thereof to each of such individual plaintiffs would be greatly, or at all, in excess of \$10,000. As to the remaining allegations of said paragraph the defendants are without knowledge.

- 21. Answering paragraph 21, the defendants admit that the radio broadcasting stations in the State of Florida named in said paragraph are members of the National Association of Broadcasters. They deny that said Association has acted or presently acts collectively in dealing with the Society; deny that the State statute was sponsored by [fol. 113] an organized group of radio broadcasters or other users of music, or that it was sponsored at all so that such users of music might have free access to the musical compositions of the plaintiffs without compensation. As to the remaining allegations of said paragraph the defendants are without knowledge.
- 22. Answering paragraph 22, the defendants admit the allegations thereof to be true.
- 23. Answering paragraph 23, the defendants admit the allegations thereof to be true, except as follows: They deny that the contracts in force between the Society and the users of music within the State of Florida are for the benefit of such Florida users; they deny that license fees mentioned in said paragraph have been fixed in "negotiations" with the respective users or in negotiations with the trade associations therein referred to, and to the contrary allege that because of the monopolistic power wielded by the Society, no negotiations on the part of the users of such music were had or were at all possible, since such users must comply

with the requirements of the Society under penalty of having their several businesses destroyed by infringement suits, unless rescued from such disaster by the provisions of the Florida statute.

- 24. Answering paragraph 24, the defendants admit that by virtue of various treaties and proclamations issued pursuant to the copyright act reciprocal rights with respect to copyright protection within the United States are extended to citizens of the foreign countries named in said paragraph whereby the citizens of such foreign countries are extended [fol. 114] copyright protection within the United States upon compliance with the copyright act with respect to their several musical compositions, and admit that the Society under its standard form of license agreements claims to grant licenses to publicly perform for profit copyrights owned in such foreign countries under authority from the owners thereof; but the defendants are without knowledge whether the Society actually has such authority, and if so, as to the terms upon which the same is granted. As to the remaining allegations of said paragraphs the defendants are without knowledge.
- 25. Answering paragraph 25, the defendants are advised that the allegations of said paragraph constitute solely matters of law to which they are not required to make factual reply; but defendants allege that since the institution of this suit, by House Bill 1103, the Legislature of Florida has enacted legislation which operates to repeal the portions of Chapter 17807, Laws of Florida, 1937, of which complaint is made in said paragraph of the bill, by reason whereof the allegations of said paragraph have become moot.
- 26. Answering paragraph 26, the defendants deny that under the Florida statute complained of each plaintiff would be required separately to investigate infringements and determine whether payments were made for public performance of their copyrights and deny that the establishment of such an agency would cost each of the plaintiffs many thousands of dollars or would exceed greatly, or at all, the revenue which each of them might hope to collect in the State of Florida; and to the contrary allege that the plaintiffs, if [fol. 115] dissociated from the price-fixing combination in which they are now engaged, might lawfully and could associate themselves together for the purposes aforesaid and

at no greater cost than the like activaties of the Society now subject them to. As to the remaining allegations of said paragraph the defendants are without knowledge.

- 27. Answering paragraph 27, the defendants are without knowledge as to the allegations of said paragraph.
- 28. Answering paragraph 28, the defendants admit the allegations of said paragraph to be true except that they are without knowledge as to the number of copyrighted works of the plaintiffs and other members of the Society and of its affiliated Societies which are broadcasted without the State and heard on receiving sets within the State of Florida.
- 29. Answering paragraph 29, the defendants are advised that the allegations thereof constitute mere matters of law to which they are not required to make factual reply; but if the Court should determine otherwise, the defendants deny each and every the allegations of said paragraph.
- 30. Answering paragraph 30, the defendants admit that copyrighted works such as motion pictures, dramas, newspapers, magazines and periodicals are dealt in, licensed and sold in the State of Florida, none of which are affected by said State statute. The defendants are advised that the remaining allegations of said paragraph constitute mere matters of law to which they are not required to make factual reply.
- . 31. Answering paragraph 31, the defendants are without knowledge as to the allegations of said paragraph.
- [fol. 116] 32. Answering paragraph 32, the defendants are advised that the allegations thereof constitute mere matters of law to which they are not required to make factual reply; but if the Court should determine otherwise, the defendants deny each and every the allegations of said paragraph:
- 33. Answering paragraph 33, the defendants are advised that the allegations thereof constitute mere matters of law to which they are not required to make factual reply; but if the Court should determine otherwise, the defendants deny each and every the allegations of said paragraph.
- 34. Answering paragraph 34, the defendants deny the allegations thereof.

- 35. Answering paragraph 35, the defendants are without knowledge as to the number of counties in Florida in which there are establishments publicly performing for profit copyrighted musical compositions of members of the Society and the foreign Societies with which the Society has reciprocal contracts. The remaining allegations of said paragraph are denied.
- 36. Answering paragraph 36, the defendants are without knowledge as to the allegations of the first paragraph of said paragraph 36. The defendants are advised that the remaining allegations of said paragraph are mere matters of law to which they are not required to make factual reply; but if the Court should determine otherwise, the defendants deny each and every the remaining allegations of said paragraph.
- 38. Answering paragraph 38 (by clerical misprision numbered 38 instead of 37) the defendants deny the allegations thereof.

[fol. 117] B. Answer to Supplemental Bill of Complaint:

- 1. Answering paragraph 1, the defendants are advised that the allegations of said paragraph constitute mere conclusions of the pleader to which they are not required to make factual reply.
- 2. Answering paragraph 2, the defendants admit the allegations thereof to be true.
- 3. Answering paragraph 3, the defendants admit the allegations thereof to be true.
- 4. Answering paragraph 4, the defendants admit the allegations thereof to be true except that said appeal is no longer pending, having been returned to the above named Court by mandate of the United States Supreme Court filed herein May 19, 1939.
- 5. Answering paragraph 5, the defendants admit the allegations thereof to be true.
- 6. Answering paragraph 6, the defendants admit the allegations thereof to be true.
- 7. Answering paragraph 7, the defendants admit the allegations thereof to be true.

- 8. Answering paragraph 8, the defendants admit the writing of the letter copied in said paragraph; but the remaining allegations of said paragraph are denied.
- 9. Answering paragraph 9, the defendants admit that the said Tyrus A. Norwood has at all times endeavored to have the interlocutory injunction heretofore entered herein vacated. The remaining allegations of said paragraph are denied.

[fol. 118] 10. Answering paragraph 10, the defendants deny that the defendant George Couper Gibbs, either directly or through his assistant, Tyrus A. Norwood, has made any such threats as are alleged in said paragraph. Further answering said paragraph, they say that since the institution of this suit, by House Bill No. 1103, enacted by the Florida Legislature, June 12, 1939, Sections 2-A, 2-B and 6 of Chapter 17808, Laws of Florida, 1937, have been repealed.

- 11. Answering paragraph 11, the defendants deny the allegations thereof.
- C. And further answering said Bill of Complaint and Supplemental Bill, and each and every part thereof, the defendants allege:
- 1. That the plaintiffs do not come into equity with clean hands because of the matters and things hereinafter set forth.
- 2. The plaintiffs other than the Society are members of the Society.
- 3. The members of the Society comprise a substantial number of the owners of copyrighted musical compositions within the United States, approximately 123 music publishers and 1,000 composers and authors of musical compositions.
- 4. The members of the Society, together with 44,000 foreign publishers, composers and authors, have vested in the Society the exclusive right until December 31, 1940, to license within the United States the public performance for profit of all of their copyrighted works which comprise a very large part—60% or more—of the music actually performed for profit within the United States.

[fol. 119] 5. The Society is organized, maintained and actually operated in the State of Florida for price-fixing purposes and among the powers vested in its Board of Directors is that to fix the rate, time and manner of payment of royalties. No licensee is granted the right to perform for profit any of the musical compositions thus controlled by the Society except upon the basis of a blanket license publicly to perform for profit all of such musical compositions.

- 6. A very large part of the revenues of the Society are derived from the licensing by blanket licenses as aforesaid by radio broadcasting stations which compose the largest class of users of copyrighted music in the United States and in the State of Florida. Licenses granted to broadcasting stations by the Society in Florida and throughout the United States are based upon a fixed per cent of the gross income of the Station, plus an annual fee. In Florida and throughout the United States licenses are granted by the Society to radio broadcasting stations 51% or more owned by a newspaper upon terms more favorable than those granted to stations not thus owned.
- 7. The relief sought by the Bill of complaint and supplemental bill of complaint in this cause is directly in aid of the perpetuation of the price-fixing monopoly thus vested in the plaintiff Society, and should be denied.
- D. And for a first counter-claim, the defendants allege as follows:
- 1. They incorporate herein by reference the allegations of paragraphs C-2 to C-6 of this answer.

[fol. 120] 2. The monopolistic and price-fixing activities of the Society as hereinabove set forth are directly in violation of Chapter 17807, Laws of Florida, 1937, the enforcement of which statute is sought to be enjoined by the plaintiffs in this proceeding, and such activities are actually being practiced by the Society and its agents within the State of Florida.

Wherefore, defendants pray that a preliminary and final injunction be issued by this Court against the plaintiffs, and each of them, and those controlled by the plaintiffs, or any of them, restraining them from:

- (a) The making of further contracts in this State for the licensing for public performance rights on copyrighted music in the State of Florida, either through the Society or any other combination for price-fixing purposes;
- (b) The collection of license fees or the enforcement or attempted enforcement of existing contracts, agreements, or licenses within this State made by any person, firm or corporation with the Society or any other combination made by the plaintiffs for the purpose of fixing prices on such public performance rights of copyright music within the State of Florida.

George Couper Gibbs, Attorney General; Tyrus A. Norwood, Assistant Attorney General; Lucien H. Boggs, Andrew W. Bennett, Attorneys for the Defendants.

[fol. 121] IN UNITED STATES DISTRICT COURT

ORDER FOR HEARING-Filed October 9, 1939

Having considered the motion and affidavits for leave to file further supplemental complaint, bring in new defendants, substitute certain defendants, and for further temporary injunction, and the proposed further supplemental Bill of Complaint tendered therewith, and the motion of complainants to dismiss the counterclaim of defendants,

It is, Thereupon, Ordered and Adjudged:

1. Plaintiffs' said motions be, and the same are hereby set for hearing before the Court at the Courtroom thereof of the Federal Building at Jacksonville, Florida, at the hour of ten o'clock A. M., on the 19th day of October, 1939.

- 2. That the Honorable Joseph C. Hutcheson, Jr., a Judge of the Circuit Court of Appeals for the Fifth Circuit, and the Honorable Louie W. Strum, one of the Judges of the United States District Court for the Southern District of Florida, be, and they are hereby called to my assistance to hear and determine said motions at said time and place.
- 3. That written notice of the time and place of hearing on said motions be given to Honorable Fred P. Cone, the Governor of the State of Florida, the Honorable George Couper Gibbs, Attorney General of the State of Florida,

and to such other persons as may be defendants in this suit, or their attorneys and solicitors of record, at least five days [fol. 122] before the date of said hearing.

Dated in Chambers, this 9 day of October, 1939.

(S.) Augustine V. Long, United States District Judge.

[fol. 123] IN UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF FLORIDA, GAINESVILLE DIVISION

GENE BUCK, Individually and as President of the American Society of Composers, Authors and Publishers; Carl Fischer, Inc., G. Schirmer, Inc., Irving Berlin, Inc., Deems Taylor, Oley Speaks, William J. Hill, Anne Paul Nevin, Ella Herbert Bartlett and Jane Sousa, Complainants,

against

George Couper Gibbs, Individually and as Attorney General of the State of Florida, E. Dixie Beggs, Jr., Individually and as State Attorney for the First Judicial Circuit of Florida; O. C. Parker, Jr., Individually, and as State Attorney for the Second Judicial Circuit of Florida; A. K. Black, Individually, and as State Attorney for the Third Judicial Circuit of Florida; William A. Hallowes, III, Individually and as State Attorney for the Fourth Judicial Circuit of Florida; J. W. Hunter, Individually and as State Attorney for the Fifth Judicial Circuit of Florida; Chester B. McMullen, Individually and as State Attorney for the Sixth Judicial Circuit of Florida; Murray Sams, Individually and as State Attorney for the Seventh Judicial Circuit of Florida; J. C. Adkins, Individually and as State Attorney for the Eighth Judicial Circuit of Florida; Murray W. Overstreet, Individually and as State Attorney for the Ninth Judicial Circuit of Florida; L. Grady Burton, Individually and as State Attorney for the Tenth Judicial Circuit of Florida; G. A. Worley, Individually and as State Attorney for the Eleventh Judicial Circuit of Florida; Roy D. Stubbs, Individually and as State Attorney for the Twelfth Judicial Circuit of Florida; J. Rex Farrior, Individually and as State Attorney for the Thirteenth Judicial Circuit of Florida; John H. Carter, Jr., Individually and as State Attorney for the Fourteenth Judicial Circuit of Florida; Louis F. Maire, Individually and as State Attorney for the Fifteenth Judicial Circuit of Florida; "John Doe" and "Richard Roe", Defendants,

- R. A. Gray, Individually and as Secretary of the State of Florida, J. M. Lee, Individually and as Comptroller of the State of Florida, Added Defendants,
- T. E. Duncan, Individually and as State Attorney for the Eighth Judicial Circuit of Florida; L. D. McRae, Individually and as State Attorney for the Fourteenth Judicial Circuit of Florida; Phil O'Connell, Individually and as State Attorney for the Fifteenth Judicial Circuit of Florida; Clyde H. Wilson, Individually and as State Attorney for the Twelfth Judicial Circuit of Florida, Substituted Defendants

FURTHER SUPPLEMENTAL BILL OF COMPLAINT—Filed October 19, 1939

The complainants, Gene Buck, individually and as President of the American Society of Composers, Authors and [fol. 124] Publishers, Carl Fischer, Inc., G. Schirmer, Inc., Irving Berlin, Inc., Deems Taylor, Oley Speaks, William J. Hill, Anne Paul Nevin, Ella Herbert Bartlett and Jane Sousa, by their undersigned counsel, bring this their further supplemental bill of complaint herein against George Couper Gibbs, individually and as Attorney General of the State of Florida, and the other defendants named in the caption hereinabove, and say:

- 1. Since the filing of the original and supplemental bill of complaint herein, certain material facts have occurred as are hereinafter alleged.
- 2. That on or about the 12th day of June, 1939, the Legislature of the State of Florida enacted a law known as House Bill No. 1103 and Senate Bill No. 635, hereinafter referred to as the "New Law" (a copy of which is annexed hereto and marked Exhibit M). That such law became effective on or about the 12th day of June, 1939, by failure of the Governor of the State of Florida to take any action thereon.

- 3. Since the enactment of said New Law, the Society has been compelled to refrain from doing any business in the State of Florida and is not at the present time doing any business in that State and is unable to do business in that State for the reasons hereinafter mentioned, unless the injunction prayed for herein is granted.
- 4. That heretofore and on February 7, 1938, this action was commenced as a result of the enactment by the State of Florida of the Act of June 9, 1937, Florida Laws of 1937, Volume 1, page 204, General Laws of Florida, 1937, c. 17807; which law will be referred to hereinafter as the "Original Law"; on the same day a motion for temporary injunction was filed; thereafter the defendants filed a motion to dismiss the bill, which motion came on to be heard at the same time as the motion for temporary injunction. Defendants' motion to dismiss was denied and temporary injunction was entered by this Court on April 4, 1938; thereafter, one Cary D. Landis, formerly Attorney General of the State of Florida and one of the defendants herein, died, and the defendant George Couper Gibbs was named as his successor; thereafter a motion was made by said George Couper Gibbs and by the other defendants to dismiss the complaint on the ground that the action had abated by reason of the death. of said Cary D. Landis; plaintiffs moved for an order substituting said George Couper Gibbs for said Cary D. Landis. Both motions having come on to be heard in this Court were denied. In the meantime, an appeal was taken to the United States Supreme Court from the order granting temporary injunction and denying the motion to dismiss, and a motion was made in the United States Supreme Court by defendants to vacate said decree and to direct the dismissal of the bill of complaint. Defendants countered in that Court with a renewal of its motion to substitute said George Couper Gibbs for said Cary D. Landis, deceased; defendants' motion was denied and plaintiffs' motion was granted. and an order was entered substituting the said George Couper Gibbs in place of Cary D. Landis. The Supreme Court affirmed the order of temporary injunction, the mandate of affirmance having been filed in this Court on the 19th day of May, 1939. A supplemental bill of complaint was heretofore filed by plaintiffs in both the Supreme Court and in this Court.

[fol. 125] 5. During the pendency of said appeal to the Supreme Court, the parties to this action stipulated that

the time of the defendants to answer be extended until 30 days after the determination of the appeal by the United States Supreme Court. Such time expired on June 19, 1939, whereupon defendants filed their answer herein. Simultaneously with the filing of said answer, defendants filed a motion to dismiss the supplemental complaint on the alleged ground that the enactment of the New Law aforesaid repealed Section 2(a), 2(b) and 6 of the Original Law.

- 6. Said New Law makes it unlawful, among other things, for any persons to license the performing rights of any copyrighted musical or dramatico-musical composition or to collect any compensation on account of such license, unless such person shall do the following:
- (a) File with the Comptroller on forms prescribed by the Comptroller, a list describing each such musical composition or dramatico-musical composition intended to be licensed in the State, including the name and title of such composition, the date of the copyright, number or other symbol given thereto in the United States Copyright Office, the name of the author, the name of the publisher, the name of the present owner of the copyright, and the name of the present owner of the performing rights; and to pay a filing fee of two cents for each composition;
- (b) To file simultaneously, an affidavit describing the public performance rights to be licensed or sold or otherwise disposed of, setting forth that the compositions so listed are copyrighted under the laws of the United States, that the facts contained in the list are true, that affiant has full authority to sell, license or otherwise dispose of the performing rights of such composition, setting forth affiant's name, occupation, residence, and if an agent, the name, occupation and residence of his principal.
- 7. Said New Law imposes upon the Comptroller of the State of Florida the duty to make available said list to all persons for examination and taking of copies and authorizes the Comptroller in his discretion to cause a list of all such copyrighted material filed with him to be published once a year or oftener, in such form and medium as he shall deem suitable. The person furnishing such list is required to obtain from said Comptroller a certified duplicate copy of such list, which certified duplicate must be exhibited

by such person to anyone to whom such person seeks to sell, license or otherwise dispose of such composition.

- 8(a). The New Law further provides that it shall be unlawful for two or more owners of the copyrights of musical compositions or dramatico-musical compositions to associate or combine together in any manner, directly or indirectly, for the purpose of issuing blanket licenses (defined in the Statute as "any device whereby public performance for profit is authorized of the combined copyrights of two or more owners"), upon a blanket royalty covering more than one or all of such compositions owned or controlled by the members of such association, unless each individual copyright owner included in such association or such association in behalf of each individual copyright owner also shall make available to each user of such compositions within the State of Florida on the option of the [fol. 126] user, the right to perform publicly for profit each such copyrighted composition at a price established for each separate performance of each such composition.
- (b) Under this provision, the users in Florida, a substantial number of whom are combined into powerful trade associations acting in the State of Florida in concert with each other and in concert with national groups of similar users, could and would prevent the Society from issuing more than one license because, upon issuing a single blanket license to a single user, all users in the State of Florida would have the right to perform any and all musical and dramatico-musical compositions owned by members of the Society at a price which it would be necessary for the Society to fix. The new law does not impose any obligation upon the users to pay license fees at any time. The copyright owners are compelled to give an involuntary license to the users in the State of Florida, but the users are not compelled to keep a record of their performances or to file such a record in the office of the Comptroller, or to make payments prior or subsequent to the exercise of the rights claimed by them under the compulsory license granted by the new law. Thus, the practical effect of the new law is to confiscate the copyright musical compositions and dramatico-musical compositions of complainants and others similarly situated for the private benefit of users of music in the State of Florida. There are at the present time 484 contracts in force between the Society and users of music

in the State of Florida. In addition there are in excess of 50 establishments which are publicly performing for profit the musical compositions copyrighted by members of the Society, although the owners of such establishments do not have licenses to give such performances lawfully. If the Society should attempt to grant a blanket license to any of these establishments it will 'olate the New Law unless it permits all other establishments to enjoy a statutory license without entering into contractual relations of any kind with the copyright owners. The Society and its members including complainants are unwilling to do this.

- 9(a). The copyright owner is required to file, in addition to the aforesad list, a schedule of prices for the performing rights to each separate performance for profit of each such composition contained in such list, together with an affidavit of the copyright owner of such composition that the price so stated has been determined by such copyright owner acting for himself and not either, directly or indirectly, in concert or by agreement with the owner or owners of any other copyright. If any classifications are made in said schedule of prices, they must be determined by use and function, or either, of the users of said compositions, with a separate price for each classification, provided that there is equal treatment of all persons within each classification and that there is no unreasonable discrimination between classifications. The prices fixed must remain effective until seven days after a new schedule of prices is filed with the Comptroller. This schedule must be made available by the Comptroller and may be published by the Comptroller.
- (b) Said New Law further provides that a copy of each blanket license issued with respect to performance within the State of Florida must be filed with the Comptroller by the person issuing same, who must pay the prescribed fees therefor.
- (c) Said New Law makes it unlawful to license performing rights for fees based in whole or in part on any pro[fol. 127] gram not containing any composition licensed.

 If the license fee includes the payment of royalties based upon programs not using such compositions, said license agreement is valid only to the extent that it is based and computed upon a program in which a composition is ren-

dered. The licensing of any composition not listed is unlawful.

- 10. Simultaneously with the filing of the aforesaid list, the owner of said performing rights is required to designate the Secretary of State of the State of Florida as his agent for the purpose of accepting service of process in any action or proceeding under the New Law accompanied by a filing fee of \$5.00. No action may be brought with respect to such performing rights or to collect any compensation on account of any sale, license or other disposition thereof in the State of Florida except upon pleading and proving compliance with the New Law.
- 11. A tax of an amount equal to three per cent (3%) of the gross receipts of all such sales, license or other disposition of performing rights in the State of Florida is levied and shall be collected by the State Comptroller on or before March 15, 1940 for he portion of the calendar year 1939 after the effective date of the New Law and annually thereafter on or before each 15th day of March, and a return ona form prescribed by the Comptroller shall be made by all persons subject to this tax on or before the 15th day of March of every year. If the tax is not paid, the Comptroller is given authority to commence proceedings and to apply for the appointment of a receiver to take over the assets of the delinquent taxpayer within the State of Florida. Violation of the New Law is made a misdemeanor punishable in the manner applicable to misdemeanors in the State of Florida, by Section 7104 as amended of the compiled General Laws of Florida, to wit: A fine not exceeding Two Hundred Dollars or imprisonment not exceeding ninety days or both in the discretion of the Court.
- 12. The New Law also provides that any person who negotiates or collects or attempts to collect license fees in any capacity whatsoever as a representative or agent for any person owning public performing rights of any copyrighted composition shall be subject to the penalties of the New Law. Any person aggrieved by a violation of the New Law may sue in the State courts of Florida to recover damages suffered or to require specific performance. Broad powers are given to the State Attorneys under the direction of the Attorney General to institute civil or criminal proceedings to enforce the New Law.

- 13(a). The New Law also provides that all laws or portions thereof relating to the same subject matter as the New Law and which are inconsistent with its provisions are hereby superseded by the provisions of the New Law to the extent that such inconsistency exists.
- (b) The New Law also contains a provision that nothing therein shall be construed to repeal, supersede or modify any of the Statutes of the State of Florida pertaining to monopoly or restraining trade including, but without limiting the same, Sections 1, 2(c), 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, and 14 of Chapter 17807 of Laws of Florida, 1937 (the Original Law).
- (c) It is also provided that the revenue provision of this Act shall take effect immediately and persons having con[fol. 128] tracts to sell performing rights in the State of Florida shall file copies of such contracts with the Comptroller within thirty days after the Act becomes a law, and shall within ninety days of such date comply with the other provisions of the Act requiring the filing of any data.
- 14. Said New Law does not expressly or by implication repeal any sections of the Original Law.
- 15(a). Simultaneously with the introduction of the New Law as a bill in the Florida Senate by Senator Beacham on May 8, 1939, a combining bill was introduced by the same Senator, known as Senate Bill No. 636; and simultaneously with the introduction of said New Law as a bill in the Florida House by Representative Marchant on May 8, 1939, a combining bill was introduced by said Representative Marchant known as House Bill No. 1110, said House Bill No. 1110 being identical with Senate Bill No. 636. A true copy of said bill is hereto annexed and made a part of this further supplemental bill of complaint and marked Exhibit N.
- (b) Said combination bill (House Bill No. 1110 and Senate Bill No. 636) provided for the repeal of Sections 2(a), 2(b) and 6 of the Original Law and for an amendment of Section 8 of the Original Law which had reference to the penalties. Said combination bill failed of passage and was not enacted. By reason of the failure of passage of such repealing bill, the Original Law remains in full force and effect except as amplified and extended in scope by the New Law.

16. Defendant R. A. Gray is the duly elected, appointed, qualified and acting Secretary of State of the State of Florida; defendant J. M. Lee is the duly elected, appointed, qualified and acting Comptroller of the State of Florida. Both of said defendants are charged with the duty of enforcing the provisions of the New Law, and will enforce the same unless restrained by this Court.

17. The value of the matter in dispute between plaintiffs and defendants is in excess of the sum of \$3,000.00 inclusive of interest and costs.

18. This further supplemental bill of complaint is brought among other things, to enjoin the enforcement of the New Law: to repress and prevent the deprivation under color of the said New Law of certain rights, privileges and immunities secured to complainants by the Constitution and laws of the United States and the Constitution of the State of Florida, that is, the right to have and enjoy exclusive rights under certain copyrights granted and owned by the respective complainants, other than the Society, as well as the exclusive right to publicly perform for profit such copyrighted compositions which has been vested in the complainant Society for a limited period as hereinafter set forth, which rights have been respectively granted to the complainants pursuant to Article I, Section 8 of the Constitution of the United States and the Copyright Act of 1909 as amended (35 Stat. L. 1075-1078, U. S. Code, Title 17); to repress and prevent the deprivation of such rights without due process of law and without the equal protection of the laws; and to repress and prevent the impairment of obligations of contracts heretofore made by the respective complainants and others similarly situated; to repress and prevent the opera-[fol. 129] tion and enforcement of said New Law; to repress and prevent a compulsory and irrevocable grant of special privileges to the users of complainants' copyrighted musical compositions in the State of Florida in violation and disregard of complainants' rights; to repress and prevent the taking of complainants' property without just compensation and for a private purpose; to repress and prevent the enforcement of said New Law as a special law granting to corporations, associations and individuals a special privilege and retroactive in its operations; and this further supplemental bill, among other things, involves the question as to whether or not each of the complainants may

combine with one or more other persons as defined in the Statute as a partnership, society, association or corporation (whether a resident or non-resident of the State of Florida), for the purpose of licensing the public performance for profit of their copyrighted musical compositions without the State of Florida; whether or not complainants in combination with one or more other persons, have the right to issue by themselves or through any agent, attorney or representative, the right to users in Florida to publicly perform for profit musical compositions copyrighted and owned by complainants on any basis other than prescribed in said New Law; whether or not complainants acting in combination or collectively have the right to issue to citizens of Florida licenses for the public performance for profit of their copyrighted musical compositions copyrighted and owned by complainants by means of blanket licenses and fixed fees for the public performance for profit of complainants' copyrighted musical compositions to users within the State of Florida without giving such user an option to pay royalties either on a per piece or program basis; whether the State of Florida has the right to require and compel complainants to file within the State of Florida a list of musical compositions written, composed, copyrighted or owned by the complainants; whether or not the State of Florida may deprive complainants of rights secured under the Copyright Laws of the United States to restrict certain uses of their copyrighted works where they have given a license for a limited use thereof; whether the State of Florida has the right to require or compel complainants to fix a price for their copyrighted musical compositions for the performing rights of each separate performance for profit of each composition belonging to the complainants and to compel complainants to make classifications determined by use and function or either of the users of such compositions with separate price for each classification; whether the State of Florida may fix the terms upon which complainants may license the performance for profit of their respective compositions to users within said State; whether the State of Florida has the right to subject complainants and others similarly situated to the jurisdiction of the Courts of Florida and to require them to designate the Secretary of State as a person upon whom process may be served as their agent in the event that complainants or any of them shall attempt to license the public performance for profit of their respective copyrighted musical compositions or dramatico-musical compositions or to collect any compensation on account of any such sale, license or other disposition in the State of Florida; whether the State of Florida may prevent plaintiffs from engaging an attorney, agent, collector or representative in said State by enacting that any such attorney. agent, collector or representative shall be subject to the [fol. 130] penal provisions of said State Statute; whether the State of Florida has the right to impose a three per cent (3%) tax upon moneys collected by complainants for licenses to publicly perform for profit the copyrighted musical compositions and dramatico-musical compositions within the State of Florida; and whether said tax is discriminatory: whether said State Statute is sufficiently definite to apprise complainants of the acts for which they may be subjected to the penal provisions of said State Statute. including fine and imprisonment; and whether or not defendants in threatening to enforce the provisions of said New Law against complainants are not depriving complainants of their property and their right to liberty without due process of law; and whether they are not denying the complainants the equal protection of the laws; and whether the State of Florida may impose conditions upon the enjoyment of copyright in the United States by the 44,000 members of foreign societies who have authorized the Society to grant licenses in the United States in their behalf, which conditions are not embraced in but are in conflict with existing treaties. Presidential proclamations and the Copyright Act of the United States. This further supplemental bill is brought to repress and prevent defendants from proceeding under and by virtue of the provisions of said New Law and from illegally and unlawfully threatening complainants and their employees, representatives and agents with fine, arrest, imprisonment and penalties under said New Law.

19. Upon information and belief, that since the filing of the supplemental bill of complaint herein, an organized group of radio broadcasters, headed by the National Association of Broadcasters, and other groups of users of music and other associations of users of music, in an endeavor to destroy the Society, so that they might have for their own selfish aggrandizement free access to all musical compositions without compensation, caused to be presented in various States bills substantially similar to the New Law. Such

bills were introduced late in 1938 and early in 1939 in the following States: Arkansas, New Mexico, Oklahoma, Minnesota, Indiana, Illinois, Oregon, Pennsylvania, Connecticut, Ohio, Michigan, Missouri, North Dakota, Montana, Colorado, Kansas, Washington, and Alaska. Said bills were defeated in each and every State except in the States of North Dakota, Montana and Kansas and the Territory of Alaska. In Montana, the statute that had been passed in 1937 which had been in litigation was repealed and there has been reenacted a bill similar to the New Law; in all, eighteen bills were introduced, of which fourteen were defeated or vetoed or failed to be reported out of committee, and four were enacted, to wit: Alaska, North Dakota, Montana and Kansas.

20. Upon information and belief that the New Law has been sponsored by the National Association of Broadcasters and by the broadcasters of the State of Florida acting in conjunction with such National Association of Broadcasters; that said New Law and its combination bills were introduced in the Legislature of the State of Florida shortly after the United States Supreme Court rendered its decision in this case affirming the temporary injunction, and that the said New Law was enacted for the purpose of enabling the defendants to move to dismiss the supplemental bill of complaint in this case, which motion they have [fol. 131] already made; and said New Law was introduced and sponsored by the National Association of Broadcasters and the broadcasters of the State of Florida for the purpose of attempting to nullify and render void and ineffective the temporary injunction heretofore granted by this Court and the decision of the Supreme Court affirming said temporary injunction.

21. In the State of Tennessee, a similar statute was enacted, sponsored by the National Association of Broadcasters and other organized associations of users, on May 21, 1937; complainant Society and a number of the other complainants hereto brought suit in the District Court of Tennessee to restrain the enforcement of said statute and moved for temporary injunction, which was granted on December 1, 1938; the Tennessee statute contained provisions similar to the New Law with regard to the per piece compulsory system of licensing and the filing of lists; a

copy of said statute (Chapter 212, Tennessee Laws, 1937) is hereto annexed, made part of this further supplemental bill of complaint and marked Exhibit O. A copy of the injunction order entered by Hon. Xenophon Hicks, Circuit Judge, Hon. John J. Gore, District Judge, and Hon. George C. Taylor, District Judge, is hereto annexed and made part of this further supplemental bill of complaint and marked Exhibit P.

22(a). Upon information and belief, compliance with said New Law would require the Society and its members and affiliated, foreign societies, to abandon the contracts between them, and would compel each of the complainants as well as other members of the Society similarly situated, to rescind their respective contracts with the Society unless they were willing to have their works used for public performance in Florida upon an arbitrary basis upon a per piece or program system; the complainants and others similarly situated and the foreign societies affiliated with the Society are not willing to permit their musical compositions or dramatico-musical compositions to be performed within the State of Florida publicly for profit upon a per piece basis or program basis or on any basis wherein the fee or compensation would be arbitrarily determined by the provisions of the New Law; complainants believe that such a requirement and compulsory license and price fixing would deprive them of the exclusive rights vouchsafed to them under the Copyright Law; if each complainant would be required to act independently in order to have the right to fix license fees in the State of Florida, each complainant would be required to have an investigator covering each of the places of public entertainment and amusement in said State to determine whether any infringements took place and to determine whether payments were being made in accordance with performances; the establishment of such an agency would cost each of the complainants in excess of \$10,000.00 apiece annually and would in fact greatly exceed the revenue which each of them might hope to collect within the State of Florida; all the users of music in the State of Florida have paid an average aggregate amount of \$75,000 annually for each of the last three years; the ratio paid for each county for the years subsequent to 1936 is approximately the same as stated in the original bill of complaint for the year 1936; and the amounts collected by the complainant Society from the users of music in the State of Florida in the future will at least approximate the amounts [fol. 132] collected in 1936 unless prevented by the operation of the New Law.

- (b) The cost to the Society of attempting to compile the lists and information required to be furnished under the New Law and to pay the filing fee required by the New Law would be far in excess of \$200,000.00, of which sum in excess of \$20,000.00 would be required to be paid as a filing fee under the New Law for the compositions in the repertoire of the Society which are in excess of 100,000, for the research work with reference to the compilation of such lists which would require a search over the past fifty-six years and would include many compositions which have · not been in active use and are not included in the current catalogues of members of the Society; in many cases the ownership of copyrights or performing rights is in dispute both as to the facts and the law, and it would be necessary to file affidavits of experts and to make investigations in most of the countries of the world to attempt to ascertain the ownership of each composition and the performing rights therein; other substantial sums would be required for clerical help and other incidental expenses; even with such an expenditure, it would be utterly impossible to furnish an accurate or complete list of all the respective copyrights in musical compositions and dramatico-musical compositions of the members of the Society and of its affiliated societies with the other data required by the New Law.
 - 23(a). Upon information and belief said New Law is class legislation; it is aimed only at proprietors of copyrights in musical compositions and dramatico-musical compositions and no other copyrights, and it exempts the performance of musical works which are not copyrighted under the Laws of the United States but which are protected under common law.
 - (b) A great many forms of copyright and kinds of copyrighted works are constantly dealt in, licensed and sold and otherwise made available and disposed of within the State of Florida, such as motion pictures, draman, newspapers, magazines, books and periodicals, none of which are affected by said New Law.

24. Upon information and belief, the New Law is not a reasonable exercise of the police power; it is a pretext under which the State of Florida is attempting to use its power to enact copyright laws delegated by the Constitution of the United States solely to Congress, and said New Law interferes with the copyrights of complainants and others similarly situated under the guise of an exercise of police power of said State, and said New Law in truth and in fact was enacted not in the public interest but rather for the private benefit and gain of users of music including radio broadcasters within the State of Florida in an organized effort to enable such users to have free access to the copyright works of complainants and others similarly situated, and without compensation therefor, and without being compelled to pay damages for infringement as provided for in the Copyright Act. The system of licensing provided for in said New Law would compel complainants to permit others to perform their copyrighted compositions publicly for profit in the State of Florida regardless of whether or not such persons, firms or corporations prop-[fol. 133] erly and honestly accounted for the use of complainants' copyrighted works, and complainants and others similarly situated would be deprived of the right to enter into voluntary contracts licensing the public performance for profit of their copyrighted musical and dramaticomusical works and of the right to determine the conditions under which such works might be performed and of the right to limit the frequency of the performance of such works in order to prevent the destruction of the performing right values thereof; but on the other hand, the New Law would not compel users of the public performance for profit of the works of complainants to account or pay for the use thereof to complainants, and would effect an absolute confiscation of the performing rights for profit of complainants' works in violation of the Copyright Law.

25. The defendants and each of them individually and as respective officials charged with the duties of enforcing shid New Law intend to, have threatened to and will enforce such New Law, with each and all of its terms and the whole thereof, and particularly against these complainants and others similarly situated, individually and as members of the Society, in the event that such complainants and

others similarly situated refuse to file a list of their copyrighted musical compositions and dramatico-musical compositions with the Comptroller of the State of Florida and to accept or submit to a per piece or program system of compensation for involuntary license, and said defendants intend to and will enforce and have threatened to enforce the penal and confiscatory statutes of said New Law against complainants and others similarly situated in the event that complainants and others similarly situated attempt to enforce contracts between themselves and the Society and between the Society and citizens and residents of the State of Florida, or enter into new license agreements with residents of the State of Florida for the giving of the right to publicly perform for profit any of complainants' musical compositions or dramatico-musical compositions, or fail or

refuse to submit to the jurisdiction of the State courts of Florida; and defendants intend to will enforce and have threatened to enforce, in the event of the aforesaid contingencies or any of them, the penalties provided for in said New Law and intend to, will proceed to, and threaten to proceed to prosecute complainants and other similarly situated, their employees, agents and representatives,

criminally, for alleged violation of said New Law;

26. Said New Law in its terms is so drastic and the penalties attached to the violation of the terms thereof are so great that neither complainants nor others similarly situated may continue to grant licenses to users of music within the State of Florida. There are forty-seven counties in the State of Florida, in each of which there are establishments publicly performing for profit musical compositions of members of the Society, including the other complainants herein, and the foreign societies with which the Society has reciprocal contracts, and if complainants attempt to issue licenses or collect from licensees or attempt to detect infringements of their copyrighted works in said counties, they will be subjected to a multiplicity of suits and prosecutions unless restrained by this Honorable [fol. 134] Court; complainants and others similarly situated will be unable to enforce any contracts made between them or in their behalf by the Society with residents or citizens of the State of Florida; complainants and others similarly situated, as well as the Society, have been compelled since the effective date of the New Law to desist

from licensing within the State of Florida the public performance for profit of their copyrighted musical compositions in said State and have been denied the privileges granted to them by the Congright Act; and the Society has been compelled to desist from enforcing collection of payments under existing contracts between it and users since the effective date of the New Law and has been compelled to desist from investigating infringements of the copyrights of complainants and other members of the Society and its affiliated societies by means of the public performance for profit of their respective copyrighter usical compositions and dramatico-musical compositions, and complainants will continue to suffer as aforesaid unless this Court grant an injunction as prayed for; unless this Court shall determine the validity and application of said New Law in this proceeding, complainants and others similarly situated will be deprived of the rights granted to them under the United States Constitution and the Copyright Act, and will be without any remedy for the enforcement of such rights within the State of Florida, and they will therefore be deprived of their property and liberty without due process of law and denied the equal protection of the laws, and denied privileges and immunities of citizens of the United States, all in contravention of Article I, Sections 8, 9, and 10; Article III, Section 2; Article IV, Section 2; and Article VI, Section 2, of the Constitution of the United States, and the Fourteenth Amendment to the Constitution of the United States, and Sections 1, 8, 11, 12 and 22 of the Declaration of Rights of the Constitution of the State of Florida, and Article III, Section 20, of the Constitution of the State of Florida; and complainants have no adequate remedy at law, and are relievable only in a court of equity, and if complaments are not afforded the equitable relief prayed for herein but are required to resist when criminal prosecutions and other suits or proceedings are instituted under the New Law, it will result in such a multiplicity of suits and entail such delay and so jeopardize and injure complainants in their persons and property as to make the remedy at law grossly inadequate.

27. Each of the complainants has received from the Society annually since 1936 approximately the same amounts received by each complainant in 1936 as alleged in paragraph "Thirty-sixth" of the bill of complaint herein, and

such complainants will receive such amounts down to December 31, 1940 if their right thereto is not interfered with and destroyed by such New Law.

- 28. If defendants are not restricted in their threatened and attempted enforcement of such New Law, complainants and others similarly situated will suffer great and irreparable loss, for which they have no adequate remedy at law but are relievable only in a court of equity.
- 29. Annexed hereto and made part of this further supplemental bill of complaint and marked Exhibit Q, is a list [fol. 135] of the foreign societies affiliated with the Society by contractual arrangement, as well as a list of the members of the Society divided into groups of publishers, and composers and authors.
- 30. The defendant, Roy D. Stubbs is no longer the State Attorney for the Twelfth Judicial Circuit of Florida, having been superseded in that office by the defendant, Clyde H. Wilson.
- 31. The term of office of the defendant, J. C. Adkins as State Attorney for the Eighth Judicial Circuit of Florida will expire on or about July 31, 1939, and he will be succeeded by defendant, T. E. Duncan, who is the State Attorney duly elected or designated for said District, to take office on July 31, 1939.
- 32. The term of office of the defendant, John H. Carter, Jr., as State Attorney for the Fourteenth Judicial Circuit of Florida will expire on or about July 31, 1939, and he will be succeeded by defendant, L. D. McRae, who is the State Attorney duly elected or designated for said District, to take office on July 31, 1939.
- 33. The term of office of the defendant, Louis F. Maire as State Attorney for the Fifteenth Judicial Circuit of Florida will expire on or about July 31, 1939, and he will be succeeded by defendant, Phil O'Connell, who is the State Attorney duly elected or designated for said District, to take office on July 31, 1939.
- 34. There is substantial need for continuing and maintaining this suit against the defendants, T. E. Duncan, L. D. McRae, Phil O'Connell and Clyde H. Wilson, by reason of the fact that said defendants are charged with the enforce-

ment of the New Law in their respective Districts or Circuits, and by reason of the fact that users of the musical compositions and dramatico-musical compositions belonging to complainants reside and are located in each of the respective Districts and Circuits of the aforesaid four defendants and are presently using the musical compositions and dramatico-musical compositions belonging to the complainants, for public performance for profit, as aforesaid, and will continue so to do; and said defendant, Clyde H. Wilson, will enforce and threaten to enforce the Original Law and New Law, and defendants, T. E. Duncan, L. D. McRae and Phil O'Connell will enforce and continue to enforce the Original Law and New Law commencing on July 31, 1939 when they take their respective offices, and will in all respects continue and threaten to continue the action of their predecessors in enforcing both the Original Law and the New Law.

Wherefore, the complainants pray:

- 1. That a supplemental summons may issue to the said R. A. Gray, Secretary of State, J. M. Lee, Comptroller, T. E. Duncan, I. D. McRae, Phil O'Connell and Clyde H. Wilson, made party defendants hereto, requiring them to answer the bill of complaint and requiring all of the defendants to answer this further supplemental bill of complaint fully and truthfully and not on oath, oath being hereby waived:
- 2. That defendants and each of them, individually and in their respective capacities as officials of the State of Florida [fol. 136] charged by the Original Law and the New Law with the enforcement of the provisions thereof, be enjoined and restrained by temporary as well as permanent order of injunction of this Court respectively from bringing, directly or indirectly, and from permitting to be brought. directly or indirectly, any proceeding at law or in equity for the purpose of respectively enforcing said Original Law or New Law against the complainants and others similarly situated, their respective employees, agents or any of them, and from interfering with all existing contracts entered into between complainants and others, including the Society and citizens and residents of the State of Florida, and from threatening to enforce against any citizens or residents of the State of Florida the penalties of said Original

Law and New Law in event such citizens of Florida desire to carry out the provisions of their contracts with said Society, and from prosecuting criminally the complainants, their respective representatives or agents or any of them, or others similarly situated, for doing any act or thing to detect infringement and to enforce their respective rights under the Copyright Act in the Federal Courts of the State of Florida, and generally, from doing any act or thing to carry out or enforce any of the provisions of said Original Law or New Law; and that an order to show cause issue herein upon the application of the complainants directed to the above named defendants, and each of them, requiring them to show cause why a temporary injunction should not issue as prayed for herein;

- 3. That said New Law and each and every part and section thereof, be declared to be unconstitutional, illegal and void and that a perpetual injunction be issued restraining the enforcement of said Original Law and New Law, and each and every part and section thereof, as hereinabove prayed for; and
- 4. That complainants have such other and further relief as to this Court may be just and proper.
 - Frank J. Wideman, Manley P. Caldwell, Wideman, Wardlaw & Caldwell, Solicitors for Complainants, Office & P. O. Address: 1400 Harvey Building, West Palm Beach, Florida; Frank J. Wideman, of Counsel.

[fol. 137]

Ехнівіт "М"

New Florida Law

House Bill 1103 and Senate Bill 635 Effective May, 1939, a Bill to be Entitled:

An Act Relating to Public Performing Rights in Copyrighted Musical Compositions and Dramatico-Musical Compositions; Defining the Same; Regulating Licensing of Same; Prescribing Filing Fees; Making Provisions for a Resident Agent in the State; Levying a Tax on the Gross Receipts From the Licensing of Such Rights Within the State of Florida; Providing for the Enforcement of This

Act; the Promulgation of Rules and Regulations, Governing the Enforcement of This Act; Appropriating the Proceeds of the Tax and Fees Levied Herein and Repealing Certain Laws in Conflict Herewith

Be it Enacted by the Legislature of the State of Florida:

Section 1. As used in this Act, "person" means any individual, resident or non-resident, of this state, and every domestic or foreign or alien partnership, society, association or corporation; the words "performing rights" refer to "public performance for profit"; the word "user" means any person who directly or indirectly performs or causes to be performed musical compositions for profit; the term "blanket license" includes any device whereby public performance for profit is authorized of the combined copyrights of two or more owners; the term "blanket royalty or fee" includes any device whereby prices for performing rights are not based on the separate performance of individual copyrights.

Section 2. It shall be unlawful for any person to sell, license the use of, or in any manner whatsoever dispose of, in this state, the performing rights in or to any musical composition or dramatico-musical composition which has been copyrighted, and is the subject of a valid existing copyright, under the laws of the United States, or to collect any compensation on account of any such sale, license, or other disposition, unless such person:

(a) Shall first have filed with the Comptroller on forms prescribed by the Comptroller a list describing each such musical composition and dramatico-musical composition, the performing rights in which said person intends to sell, license or otherwise dispose of in this state, which description shall include the following: The name and title of the copyrighted composition, the date of the copyright, the number or other identifying symbol given thereto in the United States copyright office, the name of the author, the name of the publisher, the name of the present owner of the copyright to said composition, and the name of the present owner of the performing rights thereto. Additional lists [fol. 138] of such copyrighted compositions may be filed by any such person from time to time, and shall be subject to all the provisions of this Act. A filing fee of two cents a

composition shall be required by the Comptroller for filing any list under this Act.

(b) Shall simultaneously file an affidavit which shall describe the performance rights to be sold, licensed or otherwise disposed of and shall state that the compositions so listed are copyrighted under the laws of the United States, that the facts contained in the list to which said affidavit relates are true, that affiant has full authority to sell, license or otherwise dispose of the performing rights in such composition; and the affidavit shall set forth the name, age, occupation and residence of the affiant; and if an agent, the name, occupation and residence of his principal.

Section 3. The list provided for in the preceding section shall be made available by the Comptroller to all persons for examination, and taking of copies, in order that any user of such compositions in this state may be fully advised concerning the performing rights therein, and avoid being overreached by false claims of ownership of said performing rights, and also avoid committing innocent infringements of said works. The Comptroller may, if in his discretion he deems it necessary, in order to prevent such overreaching and to protect the citizens of this state from committing innocent violations of the copyright laws of the United States, cause a list of all such copyrighted material filed with him to be published once a year or oftener in a form and medium which he shall deem suitable for said purpose. A duplicate of any list so filed by any such person shall at his request be certified by the Comptroller and shall by the Comptroller be given or delivered to such person, who shall exhibit the same on demand of anyone to whom such person seeks to sell, license or otherwise dispose of said performing rights.

Section 4-A. It shall be unlawful for two or more owners of the copyrights of musical compositions or dramatico-musical compositions to associate or combine together in any manner, directly or indirectly, for the purpose of issuing blanket licenses for the public performance for profit of their compositions upon a blanket royalty or fee covering more than one, or all, of such compositions owned or controlled by the members of such association unless each individual copyright owner included in such association, or such association in behalf of each individual copyright owner, also shall make available to each user of such compositions

within the state, at the option of the user, the right to perform publicly for profit each such copyrighted musical composition owned by him of it at a price established for each separate performance of each such composition. To this end, there shall be filed with the Comptroller, either as a part of the list required by Section 2 hereof or as a separate document by such copyright owner, or by such association in behalf of such owner, a schedule of prices for the performing rights to each separate performance for profit of each such composition contained in such list, together with an affidavit of the copyright owner of such compositions that the price so stated has been determined by such copyright owner acting for himself and not either directly or indirectly in concert or by agreement with the owner or owners of any [fol. 139] other copyrights. Such schedule of prices may contain reasonable classifications determined by use and function, or either, of the users of said compositions, with separate price for each classification, provided that there is equal treatment of all persons within each classification and that there is no unreasonable discrimination between classifications. Any copyright owner may at his election fix one price which shall be applicable to each rendition of each of such compositions owned by him except to the extent that he elects to name specific compositions and to fix other prices for each rendition thereof, and said prices shall remain in force and effect until a new schedule of prices with respect to the performing rights to such compositions has been similarly filed in the office of the Comptroller, at any time, at the election of such owner changes in prices to become effective seven days from the date of filing thereof. The schedule of prices provided for herein shall be made available by the Comptroller to all persons for examination and the taking of copies, and may be published by him in the same manner as provided in Section 3 hereof.

Section 4-B. Any person issuing a blanket license for performance rights shall file with the Comptroller within thirty days from the date such blanket license is issued a true and complete copy of each such license issued or sold with respect to performance within this state, together with the affidavit of such person that such copy is a true and complete copy of the original and that it sets forth each and every agreement between the parties thereto with respect to such performing rights. The Comptroller shall charge for

134

filing such contracts the same fee allowed clerks of the circuit court for similar services.

Section 4-C. It shall be unlawful for any person selling, licensing the use of or in any manner whatsoever disposing of or contracting to dispose of, in this state, the performing rights in or to any musical composition or dramatico-musical composition, to make any charge or to contract for or collect any compensation as a condition of using said performing rights based in whole or in part on any program not containing any such composition, and any such charge or contract for compensation shall be valid and enforceable only to the extent that it is based and computed upon a program in which such composition is rendered.

Section 4-D. It shall be unlawful for any person selling, licensing the use of or in any manner whatsoever disposing of or contracting to dispose of in this state public performing rights in or to any susical composition or dramatico-musical composition to make any charge or to contract for or collect any compensation for the use or performance of any such composition that has not been listed with the Comptroller as provided in Section 2.

Section 5. At the time of filing the information required in Sections 2 and 3, the owner of said performing rights shall execute and deliver to the Secretary of State on a form to be furnished by the Secretary of State, an authorization empowering the Secretary of State to accept service of process on such person in any action or proceeding, whether cognizable at law or in equity, arising under this Act, and designating the address of such person until the same shall be changed by a new form similarly filed; and service of [fol. 140] process may thereafter be effected in this state on such person in any such action or proceeding by serving the Secretary of State with duplicate copies of such process; and immediately upon receipt thereof the Secretary of State shall mail one of the duplicate copies by registered mail to the address of such person as stated on authorization last filed by him. A filing fee of \$5.00 shall accompany this notice and the Secretary of State shall deposit same in the General Revenue Fund of the State of Florida.

Section 6. No person shall be entitled to commence or maintain any action or proceeding in any court with respect to such performing rights, or to collect any compensation

on account of any sale, license or other disposition of such performing rights, in this state, except upon pleading and

proving compliance with the provisions of this Act.

Copies, certified by the Comptroller as such, of each or all of the lists, license agreements, affidavits and other documents filed with the Comptroller pursuant to the requirements of this Act, shall be furnished by the Comptroller to any person upon request at the prices regularly charged by a clerk of the circuit court for such work. Such certified copies shall be admitted in evidence in any action or proceeding in any court to the same extent as the original thereof.

Section 7. From and after the effective date of this Act there is hereby levied, and there shall be collected, a tax for the act or privilege of selling, licensing, or otherwise disposing of performing rights in such compositions in this state, in an amount equal to three per cent of the gross receipts of all such sales, licenses or other dispositions of performing rights in this State, payable to the State Comptroller on or before the fifteenth day of March, 1940, with respect to all such gross receipts for the portion of the calendar year 1939 after the effective date of this Act, and annually thereafter, on or before the fifteenth day of March of each succeeding year, with respect to the gross receipts of the preceding calendar year. A return on a form prescribed by the Comptroller shall be made by all persons subject to this tax on or before the 15th day of March of every year which shall accompany a remittance of the tax due.

The Comptroller shall have authority through his authorized agents to examine and audit the books and records of any person he may deem subject to the tax or fees under this Act and may require such persons to appear before him at his office in the Capitol, in the City of Tallahassee, Florida, which such records and papers as may be necessary after giving thirty days! notice to such person through said person's authorized agent, the Secretary of State.

The Comptroller shall also have authority through his authorized agents to examine and audit the books, records and accounts of any licensee or user making payments for use of public performing rights in the State of Florida to any person in order that the Comptroller may determine or check on gross receipts of those selling or licensing public

performing rights in the State of Florida. Any person refusing the Comptroller or his duly authorized agents access to such books, records and accounts shall be subject to penalties prescribed in Section 9 hereof and may be required to appear in person with all books, papers and accounts required by the Comptroller at the Comptroller's office in the [fol. 141] Capitol, Tallahassee, Florida, within ten days after receipt of notice which the Comptroller shall send by

"registered mail, return receipt requested."

Should the Comptroller determine that any person liable for any tax or fees under this Act has made an incorrect return or has made no return at all, or has failed to pay any tax or fees due, the Comptroller shall after determining the amount of such tax or fees due the State of Florida, from the best information at his command, certify such claim for delinquent taxes to said person through his duly designated agent, the Secretary of State, and unless payment of such delinquent tax is received within thirty days of delivery of said notice to the Secretary of State the Comptroller shall apply to a Circuit Judge in Leon County for the appointment of a receiver to take over and administer all assets of said delinquent tax payer in the State of Florida.

The Circuit Judge upon the Comptroller's application properly authenticated, shall appoint some agent of the Comptroller as receiver, to serve without further compensation, but who shall be allowed all actual expenses. After posting such bond as the judge may determine proper, the said receiver shall take over and administer the affairs of said delinquent tax payer within the State of Florida, collect accounts and do all things necessary to protect the interests of both the State of Florida and the said delinquent taxpayer and from such collections as he may make, he shall first pay the expenses of the receivership and any litigation incident thereto and the tax plus interest at the rate of 2% per month or fraction thereof from the last day of the year for which the tax was due.

After having satisfied the claims of the State and paid all costs of the receivership, the receiver shall make a return to the court, which shall order all assets returned to the

taxpayer.

Section 8. It shall be unlawful for any person, without the consent of the owner thereof, if said owner shall have complied with the provisions of this Act, publicly to perform

for profit, in this state, any such composition, or for any person knowingly to participate in the public performance for profit of such composition, or any part thereof.

Section 9. Any violation of this Act shall constitute a misdemeanor, to be punished as provided elsewhere in the laws of this state.

Section 10. Any person or persons who negotiates or collects or attempts to collect license fees or other exactions or acts in any capacity whatsoever as a representative or agent for any person owning public performing rights of any copyrighted composition shall be subject to all the penalties in this Act provided for violations thereof.

Section 11. Any person in this State aggrieved by reason of any violation of this Act may sue thereof in the circuit court in which he resides or in the circuit in which the violation took place to recover any damages as the result of the violation of the terms of the Act or to require specific performance under the provisions of this Act and shall be entitled to recover his costs, including reasonable attorneys' fees to be fixed by the court.

Section 12. The several Circuit Courts of this State shall have jurisdiction to prevent and restrain violations of this [fol. 142] Act, and, on the complaint of any party aggrieved because of the violation of any of the terms of this Act anywhere within this state, it shall be the duty of the State's attorney in their respective circuits, under the direction of the Attorney-General, to institute proceedings, civil or criminal or both under the terms hereof, to enforce any of the rights herein conferred, and to impose any of the penalties herein provided. In civil actions such proceeding may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of have been duly notified of such petition, the Court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the Court may at any time make such temporary restraining order as shall be deemed equitable.

Section 13. In the event of the failure of the State's Attorney and Attorney-General to act promptly, as herein provided, when requested so to do by any aggrieved party,

then such party may institute a civil proceeding in his own behalf, or upon behalf of Plaintiff and others similarly situated, as the State's Attorney and the Attorney-General could have instituted under the terms of this Act.

Section 14. After the costs and expenses of enforcing this act and the collection of the taxes and fees herein levied and imposed are deducted, the amount of which costs and expenses are hereby appropriated to be paid from the proceeds of this act, there is hereby appropriated the entire balance paid into the Comptroller under and by virtue of this act to the General Revenue Fund of the State of Florida.

Section 15. All laws or portions thereof whether general, special or local, which relate to the same subject matter as this Act and which are inconsistent with the provisions of this Act, are hereby superseded by the provisions of this Act to the extent that such inconsistency exists.

Nothing contained in this Act shall be so construed as to impair or affect the obligation of any contract or license which was lawfully entered into prior to the effective date.

of this Act.

Provided, however, nothing in this Act shall be construed to repeal, supersede or modify any of the statutes of the State of Florida pertaining to monopoly or restraint of trade, including but not limiting the generalities of the foregoing Sections 1, 2-C, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13 and 14 of Chapter 17807, Laws of Florida, 1937. Provided further, the revenue provisions of this Act shall take effect immediately it becomes a law and persons having contracts to sell public performing rights to users in the State of Florida shall file copies of such contracts with the Comptroller within thirty days of the date this Act becomes a law and shall within ninety days of the time this Act becomes a law comply with other provisions of this Act that require filing of any date.

Section 16. Any section in this Act, or any part of any section that shall be declared invalid or unconstitutional, such declaration of invalidity shall not affect the validity of the remaining portions hereof.

Section 17. This Act shall take effect immediately upon its becoming a law.

A Bill to be Entitled

An Act to Amend Chapter 17807, Laws of Florida, Acts of 1937 being, "An Act Declaring to be an Unlawful Monopoly and its Purposes to be in Restraint of Trade, Any Combination of Persons, Firms or Corporations which Determine the Amount of Money to be Paid to it or to its Members for the Privilege of Rendering Privately or Publicly for Profit Copyrighted Vocal or Instrumental Musical Compositions, when Such Combination is Composed of a Substantial Number of All Musical Composers. Copyright Owners, or Their Heirs, Successors or Assigns; to Require Each Composer and Each Author of Vocal or Instrumental Copyrighted Musical Compositions to Act Independently of any Combination as Herein Declared Unlawful in Determining License Fees and Other Rights: to Require the Author, Composer and Publisher to Specify upon the Musical Composition the Selling Price Thereof, Including Public Performance for Profit; to Declare that any Purchaser Thereof, Who Pays Such Price Therefor Shall Have the Right to Render Such Music Privately or Publicly for Profit; to Declare All Existing Agreements Requiring License Fees or Other Exactions for the Privilege of Rendering Copyrighted Musical . Compositions Publicly for Profit, Made with any Combination, Firm or Corporation Herein Declared Unlawful, to be Void and Nonenforceable: to Permit the Present Owners, Possessors and Users of Such Copyrighted Music to Render the Same Privately or Publicly for Profit Without Interference by Such Unlawful Combination; to Provide for the Protection of Theatres. Moving Picture Houses, Hotels, Places for Education and Public Performance or Amusement, Radio Broadcasting and Radio Receiving and Radio Rebroadcasting Stations Affiliated with Other Persons, Firms or Corporations Outside of the State of Florida, Against the Collection of License Fees or Other Exactions by Such Out of the State Affiliates for or on Account of any Combination herein Declared Unlawful; to Provide All Liability for any Infringement of Copyrighted Musical Compositions Conveyed by Radio Broadcasting, Air, Wire, Electrical Transcription or Sound Producing Apparatus,

or by Personal Performance Coming Outside of the State [fol. 144] of Florida and Used Herein to Rest Exclusively on the Out of the State Person, Firm or Corporation Originally Sending the Same into this State for Use Herein: to Provide Penalties for the Violation Hereof; to Empower the State's Attorney, under the Direction of the Attorney General, upon the Complaint of any Party Aggrieved by any Violation Hereof to Proceed to Enforce the Penalties Hereof Against Such Combination and any of its Members, Agents or Representatives; to Empower any Party Aggrieved by any Violation Hereof to Proceed in His Own Right Hereunder; to Define the Legal Procedure Required to Carry Out the Provisions Herein; to Provide for the Recovery of Costs, Expenses and Attorney's Fees; to Provide that the Terms of This Act Shall be Cumulative; to Provide that any Part of This Act Declared Illegal Shall Not Affect the Validity of the Remaining Parts Hereof." By Repealing Sections 2A and 2B and 6; and Amending Section 8 by Reducing the Penalties Provided Herein.

Be it Enacted by the Legislature of the State of Florida:

Section 1. That Section 2A of Chapter 17807, Laws of Florida, Acts of 1937 be and the same is hereby repealed.

Section 2. That Section 2B of Chapter 17807, Laws of Florida, Acts of 1937 be and the same is hereby repealed.

Section 3. That Section 6 of Chapter 17807, Laws of Florida, Acts of 1937 be and the same is hereby repealed.

Section 4. That Section 8 of Chapter 17807, Laws of Florida, Acts of 1937 be and the same is herein and hereby amended to read as follows: "Section 8: Any combination as in Section 1 hereof declared to be unlawful, and any other person, firm or corporation acting or attempting to act within this State in violation of the terms of this Act, or any representative or agent of any person, firm or corporation who aids or attempts to aid any such unlawful combination as defined in Section 1 hereof, in the violation of the terms of this Act, in any manner whatsoever, shall be punished by a fine of not less than \$50.00 or more than \$5,000.00 and by imprisonment in the penitentiary not less than 90 days or more than ten years, or by either such fine or imprisonment."

Section 5. Any section in this Act or any part of any section shall be declared invalid or unconstitutional; such declaration of invalidity shall not affect the validity of the remaining portions hereof.

Section 6. All laws and parts of laws in conflict herewith are hereby repealed.

Section 7. This Act shall take effect upon its becoming a law.

[fol. 145]

EXHIBIT "O"

Tennessee Statute

Senate Bill No. 1020

By

Sprouse Akin

An Act Entitled an Act in Aid of the Federal Copyright Laws, to Assist in Effectuating Their True Intent and Their Enforcement in the State of Tennessee by Removing and Declaring Illegal Certain Monopolistic Abuses and Activities Wrongfully Practiced under the Guise of Copyrights within the State by Price Fixing Combinations Monopolies, and Pools; to Enforce the Laws of the State of Tennessee Prohibiting Price Fixing Monopolies and Combinations in Restraint of Commerce and Trade; Providing Penalties for Combining Rights Granted by the Copyright Laws Where the Effect of Such Combination Results in the Use of Copyright Privileges as Instrumentalities of Oppression and Extortion within the State in Violation of Law; and Encouraging the Rendition, Creation and Production of Copyrighted Works Among the School Children and Citizens of the State of Tennessee: Encouraging the Marketing and Acceptance of Copyrighted Works, Created by the Citizens of this State; Defining the Jurisdiction and Duties of Courts of Record. the Duties of the District Attorneys, Receivers, the State Treasurer and the Secretary of State; Providing for the Appointment of a Receiver in Certain Instances; Defining Certain Terms; Providing for Service of Process on Non-Residents: Prohibiting Certain Acts; and Providing Penalties for Violation Hereof

Be it Enacted by the General Assembly of the State of Tennessee:

Section 1. It shall be unlawful for any person without the consent of the owner thereof, to cause to be publicly performed for profit any dramatic composition, or dramatic Musical composition commonly called an opera, or other copyrighted works, or any substantial part thereof, which has been copyrighted under the laws of the United States, or for any person to knowingly participate in the performance or representation of any substantial part thereof, or to knowingly sell a substantial copy of any substantial part thereof.

Section 2. It shall be unlawful for two or more persons holding or claiming separate copyrighted works under the copyright laws of the United States, either within or without the State, to band together, or to pool their interests for the purpose of fixing the prices on the use of said copyrighted works, or to pool their separate interests or to conspire, federate, or join together, for the purpose of collecting fees in this state, or to issue blanket licenses in this state, for the right to commercially use or perform publicly their separate copyrighted works: Provided, however, Such persons may join together if they issue licenses on rates assessed on a per piece system of usage: Provided, further, This act shall not apply to any one individual anthor or composer or copyright holder or owner who may demand [fol. 146] any price or fee he or she may choose for the right to use or publicly perform his or her individual copyrighted work or works: Provided, further, Such per piece system of licensing must not be in excess of any per piece system in operation in other states where any group of persons affected by this act does business, and all groups and persons affected by this act, are prohibited from discriminating against the citizens of this state by charging higher and more inequitable rates per piece for music licenses in this state than in other states: Provided, further, Where the owner, holder, or person naving control of any copyrighted work has sold the right to the single use of said copyrighted work, where its sole value is in its use for public performance for profit, and has received any consideration therefor, either within or without the state, then said person or persons shall be deemed to have sold and parted with the right

to further restrict the use of said copyrighted work or works.

Section 3. In the event two or more persons holding separate copyrighted musical works, or any rights flowing therefrom, whether by assignment, agency agreements, or by any form of agreement, pool their interests, or combine, or conspire, federate, or join together in any way, whether for a lawful purpose or otherwise, a complete list of their copyrighted works or compositions shall be filed once each year in the office of the Secretary of State of the State of Tennessee, together with a list of the prices charged or demanded for their various copyrighted works: no payment or filing fee shall be required by the secretary of state, and said persons, corporations, or associations, foreign or domestic shall state therein under oath, that said list is a complete catalogue of the titles of their claimed compositions, whether musical or dramatic or of any other classification. and in addition to stating the name and title of the copyrighted work it shall recite therein the date each separate work was copyrighted, and the name of the author, the date of its assignment, if any, or the date of the assignment of any interest therein, if any, and the name of the publisher, the name of the present owner, together with the addresses and residences of all parties who have at any time had any interest in such copyrighted work. The Secretary of State shall require two copies of said list, one of which he shall keep on file, the other shall be filed in the offices of the state treasurer.

Section 4. The foregoing list of names and titles provided for in the preceding section, shall be made available by the secretary of state to all persons for examination, in order that any user of copyrighted works in this state may know the rights and the titles to such copyrighted works as may be claimed by any of said combinations, pools, associations, or persons as aforesaid; said lists shall be prepared so that all persons may avoid using said copyrighted compositions, if they so desire, and may avoid conflict therewith, and avoid committing innocent infringements of said works; and in order to further effectuate the copyright laws of the United States, the secretary of state shall if he deems it necessary to protect the citizens of this state from committing innocent violations of the copyright laws of the United States, publish such list once each year in a news-

paper of general circulation in order that all citizens of the state may respect any and all individual rights granted by the United States copyright laws.

Section 5. No person, corporation, or association, domestic or foreign, whether doing business in this state as [fol. 147] hereinafter defined or not, shall be absolved from the foregoing duty of filing said list of holdings as required in the preceding sections of this act, if their music or copyrighted works are used commercially in this state, or have been used herein, whether originating from a point within the state or from without, and as long as any rendition thereof is received or heard within the state, or is intended to be so received by the originator of any musical program: Provided, however, Any individual owner of a copyrighted work or works, not a party to or not connected in any way with any pool, conspiracy, combination, or group, or association of persons, as prohibited by this act, need not file any such list.

Section 6. It is hereby declared that the production and creation of music and the commercial use of music and of copyrighted works within this state, whether originating at a point from within or without the state, as long as the same shall be rendered and publicly received within the confines of this state, whether mechanically or by radio communication, is a business clothed and affected with the public interest, and the adult educational advantages engendered by the public use of music and in its creation, makes this business one of public necessity, and necessary for the education and training of the youth of this state; that many abuses are practiced under a false guise of federal protection which only the state with its police power can easily and lawfully restrain, and in order to prohibit, discourage, and prevent monopolistic practices and to prevent extortion, to encourage free bargaining between the citizens of this state with each other and with those without the state, and in order to give greater effect to the constitutional provisions relating to monopoly and price fixing, and in the general interest of the public, therefore, the legislature in the interest of the peace and dignity of the state, in the interest of good morals and the general welfare of the people of this state, and for greater educational advantages to the public, declares that said business shall be subject to the police power and reasonable regulation of the state government,

and such police and regulating power shall be administered by the courts and other officials of this state in a manner consistent with, in aid of, and never in conflict with, the copyright laws of the United States. The provisions of this Act, and the administration thereof, shall at all times effectuate the enforcement, the true intent and meaning of the United States copyright laws within or from points without the state, by any individual, corporation, or organizations, who attempt to use the federal courts as innocent instrumentalities in the furtherance of any systematic campaign or scheme designed to illegally fix prices for the commercial use of copyrighted works in this state through the use of extortionate means and terrorizing practices based on threats of suits, and an abuse of both state and federal process, all of which are declared to be in violation of this act and of the state constitution; it is further declared that any person or persons, or combines, as aforesaid, who shall violate this act shall be deemed to have used their property within this state in such a way that same shall have acquired a legal situs, analogous to the situs of other personal tangible property within the state, even though separate from the domicile and residence of the owner: Provided. further, the legal situs of any copyrighted work is co-extensive about the state, and a copyrighted work used or sold for public use or public performance for profit, if intended [fol. 148] to be heard from a point without the state or from a point within the state, is hereby declared to be a commercial commodity, and its legal situs is hereby declared to be within the State of Tennessee.

Section 7. All persons, groups, corporations, associations, foreign or domestic, violating this chapter, shall be deemed to have been doing business within this state and amenable to the process of the state courts, when any such persons, combinations, or groups shall have issued licenses, either from within or from without the state, for the privilege of using commercially and publicly any copyrighted work or works pooled in a common group or entity, or when any of the functions of said entity, organization, pool, or combine, is or has been performed in this state; and the business of spying upon and the warning of users of the copyrighted works of such combinations, in addition to the presence within the state of such persons, and the activities of such persons or their agents at any time or occasion for the de-

tection of infringements within this state, shall be conclusive evidence that such combinations and persons, even though non-residents, have accepted the privileges of doing business within this state, and such persons, if they abide by the provisions of this act, shall be granted the privilege of conducting business within this state in a legal manner, and may invoke the benefits of the state government and its political subdivisions in their behalf, and they may use all of the privileges available to the citizens of this state, by any of such agents, their attorneys, or representative, or investigator, or by any aider and abettor, or any non-resident person, group, entity, or combination as aforesaid, shall be deemed to be an acceptance of the provisions of this act; and all licensees of any violator of this act shall be deemed as aiders and abettors of said persons and subject to the provisions of this act unless they forthwith indicate their obedience herewith; and the acceptance of the general privileges of the State of Tennessee by any non-resident copyright holder or owner, or combination, defendant, or person, or organization of any kind, or entity, through an investigator, attorney, agent, representative, or through any aider or abettor as herein defined, and the acceptance by such persons of the rights, police protection, or of any general privilege conferred by the law of this state to any of its citizens, including the use of the roads and highways, or the privileges of any of its political subdivisions, as evidenced by their presence within the state at any time, shall be deemed equivalent to and construed to be an appointment by such non-resident or non-residents, as the case may be, of the secretary of state of the State of Tennessee to be his or their true and lawful attorney upon whom may be served all summenses and processes against him or them and growing out of a violation of this act, in which said non-resident may be involved, and said acceptance of the privileges of this state, as aforesaid, shall be a signification of his or their agreement that any summons or process against him or them which is so served shall be of the same legal force and validity as if served on him or them personally within the State of Tennessee. Service of such summons or process shall be made by leaving a copy thereof with a fee of two dollars (\$2.00) with the secretary of the State of Tennessee, or in his office, and such service shall be sufficient and valid personal service upon any such non-

resident defendant, copyright holder or owner, persons, or defendants, combinations, entity, or organization, as afore-[fol. 149] said: Provided. That notice of such service and a copy of the summons of process shall be forthwith sent by registered mail requiring personal delivery by the prosecutor bringing any action under this act, to any defendant at his last known address, and the defendant's return receipt and the prosecutor's affidavit of compliance herewith are appended to the process and entered as a part of the return thereof; Provided, further, The court in which any action is brought may order such continuances as may be necessary to afford any non-resident defendant or groups, or entity, a reasonable opportunity to defend the action: Provided, further, The secretary of state shall keep a record of all such summons and process which shall show the day and time of service; and valid personal service shall thus be had on non-resident persons or individuals entitles, firms, or corporations violating this act.

Section 8. In the event any person, or groups of persons, or any combination or pool as aforesaid, whether a nonresident corporation, person or an association, or domestic, refuse to abide by the provisions hereof, or attempt to evade or render ineffectual the true enforcement of any provision of this act, then the district attorney of any county where complaint is made of any violation shall institute injunction proceedings against said persons in the proper court. and valid personal service may be had upon any non-resident defendant as set forth in the preceding section; and the court shall enjoin all persons from violating any provisions of the act and the constitutional provisions prohibiting price fixing, monopolies, and combinations; and all copyrighted works and the public performance rights thereto when sold or used for profit are hereby declared to be a commercial commodity, and all persons, aiders and abettors, and agents shall be enjoined by the court from aiding and furthering in any way a continuation of any violation of this act, either by the payment of money to said defendants or in any way; and if any defendant or defendants persist in defying the judgment of the court, the court shall, in order to effectuate its judgment and orders, order three (3) days' notice be given said defendant or defendants as the case may be, by having a copy of such notice served on the secretary of state as heretofore provided if defendants are

without the state, or served personally if within the state, and have the same published in some daily paper in the state of general circulation, and at the end of said period, if any defendant or defendants refuse to obey the order of the court, then the court shall appoint a receiver for the copyrighted works and property of defendants, tangible or intangible, and of all other effects and monies derived therefrom, and the receiver shall take over and preserve the commercial rights to all of said copyrighted works, together with such other property of any defendant, combination, pool, corporation, or entity through which they are acting, that he can locate within the state, and the receiver shall administer the same under the direction of the court, and said receivership shall be considered only as an incident to the main injunction suit of the prosecutor, and for the purpose of enforcing the court's orders: the said receiver shall seize the copyrighted works of all of the copyright holders and owners in said defendant combination, including all of the rights to suits for infringement and damages in both state and federal courts, and all choses of action and all [fol. 150] sums due on contracts and licenses, and hold licenses or contracts with any defendant combination or entity, shall the same subject to the order of the court; and all persons holding pay the fees and sums due thereon to the receiver for such time as the court may need to effectuate the provisions of this act, and to compel any defendant to abide herewith: Provided, Any sums paid on licenses violating this act shall only be continued in the court's direction or until such time as the court can award defendants complete and full due process of law before entering a final order thereon, or until such time as a legal and equitable system of licensing can be determined according to the subsequent provisions of this act: Provided, further, In the event any defendant or defendants attempt to withdraw their said copyright works or property from the state in order to violate and render this act or the court's orders ineffectual, or to deprive the citizens of this state of such . commodity, or to hamper the enforcement of any provision of this act, or to injure any citizen or user of music in any way, then the court shall immediately order the receiver to compile a complete list of all of the copyrighted works of said defendants which have been used in this state, and the court shall then determine the question of the establishment of license rates for the use those copyrighted works con-

trolled by the defendants so proceeded against; and for the purpose of aiding in the abolition of monopolies and pricefixing, and preventing violations of this act, the court shall determine a fair and just rate that the receiver should charge for the single and separate public performance for profit of each copyrighted work or works of said defendants, on a per piece system and basis of licensing, after determining such rate, the court shall immediately advise the receiver of the findings, and of its fair rate, and the same shall be filed of record in the cause, and the receiver may then issue licenses for the use of said music at such approved rate on a basis of so much money per each time a piece of music is played or used in a public performance for profit; that said property shall be thus administered by the receiver for a period of one year, or until such time as the defendants, or the individual copyright owners of any combination so proceeded against take oath that they will abide by the ruling of the court and the provisions of this act; and all fees and funds collected by the receiver shall be turned over to the state treasurer, and no receiver's fees or attorney's fees shall be allowed, and the district attorney shall be the attorney for the receiver, and the state treasurer shall keep said money in a separate and special fund, subject to the order of the court only for whatever portion thereof that the court may order used to defray the actual expenses of the board and the receivership; at the end of one year, if the defendants and copyright owners or helders in any combination thus proceeded against, continue to wilfully disobey the court's orders, then the court shall issue an order, which shall be published in three public places, to the effect that unless the defendants obey all of the orders of the court within ten days from the date of said order, that the court will proceed to permanently deprive said defendants and each of them of their property; and the court shall then order said defendants to show cause within ten days why they should not be involuntarily compelled to assign all of their copyrighted works to the receiver forthwith, and to show cause why all of the funds as collected in the manner aforesaid from licenses, together with all of the copyrighted [fol. 151] works including the performing rights thereto of said defendants and members of said combine, should not escheat and be forfeited forever to the State of Tennessee and by subject thereafter to administration by the state in the same manner as all other personal property belonging

to the State of Tennessee; if any of said defendants and copyright holders, or owners, do appear before the end of said ten day period, and take oath that they will abide by the future orders of the court and the provisions of this act, then the court shall release their copyrighted works and order the state treasurer to return any and all of their money which has been received or seized: Provided, further, The court shall retain such jurisdiction over their persons for such time as the court may deem necessary to insure strict compliance with the terms of the court's judgment and the provisions of this act; if any of said defendants or copyright owners or holders shall ignore or refuse to obey the show cause order, aforesaid, or fail to appear at the end . of ten days as ordered and abide by the court's judgment, then the court shall make an order and enter judgment to the effect that all of the copyrighted works, including the performing rights thereto, of said defendants and the members of any defendant combination, shall be construed as having been escheated and forfeited to the State of Tennessee, and the court shall thereupon appoint some officer of the court to execute an involuntary assignment of all of the legal and equitable titles to all of the copyrighted works of each of said defendants and members of any defendant combination to the receiver, in the event the defendants or any of their members fail to execute a voluntary assignment, and the receiver shall immediately file said involuntary assignment at the United States Copyright Office at Washington, D. C.: and the court shall then order the receiver to close the estate, and turn the titles to said copyrighted works over by proper assignment from the receiver to the state treasurer of the State of Tennessee who shall thereafter administer, issue licenses for the use of the same in a manner consistent with this act, and conserve the same as state personal property in his possession, and according to law; and any funds left in the state treasury from said receivership shall escheat and be forfeited to the state and become part of the general fund; Provided, further, The state treasurer shall make a report to the legislature on each biennium of the amount of money received from such licensing and the amount of property he has on hand through the enforcement of this act.

Section 9. That in the event any person, or any of the defendants, or non-residents, or non-resident copyright

owners or holders, are proceeded against as herein outlined, and are served with process according to law, or any nonresident is served with process as outlined in the preceding sections of this act, and if any of said defendants, or persons, or aiders and abettors named as defendants, appear in any such proceeding by counsel or otherwise, or institute any special proceeding attacking such proceeding, or make any motion therein, either special or general, or if any of them appear to obtain the judgment of the court solely upon the sufficiency of the service of the process upon them, or upon any phase or particularity of said injunction proceedings, such special proceeding or appearance, or motion, or appearance, as the case may be, shall nevertheless be deemed as a general appearance even though the process may have been insufficient, and said parties and defendants [fol. 152] as may thus appear in the action, for any reason or cause, whether they seek special or affirmative relief, shall thereafter be subject to the general orders and jurisdiction of the court for all purposes, and if any of said defendants or persons appear in any court proceeding instituted to effectuate this act solely for the purpose of challenging the validity of service of process upon them they shall be deemed to have surrendered themselves and as having submitted to the general jurisdiction of the court: Provided, however, This section shall not be construed as denying, and no attempt shall be made at any time in any proceeding in connection with the enforcement of this act, to restrain or deny any of said defendants, resident or nonresident, copyright holders or owners, or any person, or members of any defendant combination, entity, pool or monopoly of their rights or property without full and complete due process of law.

Section 10. Every person, in addition to the other penalties provided in this act, who violates or who procures, or aids or abets in the violating of any provision of this act, or who conspires to render ineffectual any valid order or decision of any court in the enforcement of this act, or who procures, conspires with, or aids or abets any person or persons in his or their failure to obey the provisions of this act, or to render ineffectual any valid order of any court in connection with the enforcement of this act shall be deemed guilty of a gross misdemeanor, and upon conviction, shall be punished by a fine not exceeding five hun-

dred dollars (\$500.00), or imprisonment in the county jail for not more than six months or both such fine and imprisonment.

Section 11. In case any part or portion of this act shall be held unconstitutional, such holding shall not affect the validity of this act as a whole or any other part or portion of this act, and if any clause, sentence, paragraph, subdivision, section or part of this act shall for any reason be adjudged invalid, such judgment shall not affect, impair, or invalidate the remainder of the act, but shall be strictly confined in its operation and holding to the specific clause, sentence, paragraph, subdivision, section, or part thereof, directly involved in the controversy in which such judgment shall have been rendered; and all other acts and laws in conflict herewith are hereby repealed.

Section 12. In the event more than one injunction suit provided for in this act is instituted in this state, in different counties by different prosecuting attorneys, but against the same defendants, the respective courts hearing the causes may issue orders against said defendants in the county, but in the event any of the various county proceedings enter in the state of receivership, as herein provided, then the judges hearing the respective cause shall order those causes where the defendants are the same, to be consolidated in one action in one particular county, and in such county as the judges may decide, to the end that only one receiver may be appointed for the entire state for the property of the same defendant or defendants.

Section 13. Be it Further Enacted, That this Act shall take effect from and after its passage, the public welfare requiring it.

Passed May 18, 1937.

Byron Pape, Speaker of the Senate. Walter Maynes, Speaker of the House of Representatives. Gordon Browning, Governor.

Approved 5-21-37.

[fol. 153]

EXHIBIT P

Tennessee Decree

Entered Dec. 1, 1938

United States District Court, Middle District of Ten-NESSEE, AT NASHVILLE

GENE BUCK, Individually and as President of the American Society of Composers, Authors and Publishers, et al., Complainants

against

GROVER KEATON, as State Treasurer of Tennessee, et al., Defendants

This cause coming on to be heard, and upon the consent of the attorneys for the respective parties herein, and the Court having inspected the record, and it appearing to the satisfaction of the Court that there is grave doubt as to the constitutionality of Chapter 212 of the Laws of 1937 of the State of Tennessee, and that complainants will be irreparably damaged unless an injunctional order is granted herein, and a bond having been filed and approved in the sum of \$2,000.00 conditioned upon the payment to the defendant of such costs and damages as might be incurred or suffered by any party who might be found to have been wrongfully enjoined by this order;

It is ordered:

First: That the application for interlocutory injunction be and the same is granted.

Second: That the defendants Grover Keaton, individually and as State Treasurer of Tennessee; A. B. Broadbent, individually and as Secretary of the State of Tennessee; Roy Beeler, individually and as Attorney-General for the State of Tennessee, J. L. Grayson, individually and as District Attorney-General of the First Circuit of Tennessee; J. W. Wolfenbarger, individually and as District Attorney-General of the Second Circuit of Tennessee; J. Fred Bibb, individually and as District Attorney-General of the Third Circuit of Tennessee; R. B. Witt, individually and as District Attorney General of the Fourth Circuit of Tennessee; N. B. Key, individually and as District Attorney

nev-General of the Fifth Circuit of Tennessee: Peabody Howard, individually and as District Attorney-General of the Sixth Circuit of Tennessee: C. D. Lamb. individually and as District Attorney-General of the Seventh Circuit of Tennessee; W. B. Knott, individually and as District Attorney-General of the Eighth Circuit of Tennessee: W. C. Howell, individually and as District Attorney-General of the Ninth Circuit of Tennessee: J. Carlton Loser, individually and as District Attorney-General of the Tenth Circuit of Tennessee: C. L. Boyd, individually and as District Attorney-General of the Eleventh Circuit of Tennessee; David P. Murray, individually and as District Attorney-General of the Twelfth Circuit of Tennessee: L. L. Harrell, individually and as District Attorney-General of the Thirteenth Circuit of Tennessee: J. M. Drane, individually and as District Attorney-General of the Fourteenth Circuit of Tennessee; Joseph Hanover, Marion S. [fol. 154] Boyd, Lawrence Monteverde, and W. T. McLain, individually and as District Attorneys-General of the Fifteenth Circuit of Tennessee; G. C. Watkins, individually and as District Attorney-General of the Sixteenth Circuit of Tennessee; John H. Henderson, individually and as District Attorney-General of the Seventeenth Circuit of Tennessee; A. T. Stewart, individually and as District Attorney-General of the Eighteenth Circuit of Tennessee: Howard H. Baker, individually and as District Attorney-General of the Nineteenth Circuit of Tennessee: Walter Gray, individually and as District Attorney-General of the Twentieth Circuit of Tennessee; M. G. Lyle, individually and as District Attorney-General for Montgomery County. Tennessee; and each of them individually and in their respective capacity as officials of the State of Tennessee, charged by said State Statute with the enforcement of the provisions thereof, be enjoined and restrained until the further order of this Court from bringing, directly or indirectly, any proceeding at law or in equity for the purpose of enforcing said State Statute against the complainants and others similarly situated, representatives, employees, agents or any of them, and from interfering with all existing contracts entered into by the complainants and others, including the Society and citizens and residents of the State of Tennessee, and from threatening to enforce against any citizen or resident of the State of Tennessee the penalties of said Statute in the event such citizen and resident desires

to carry out their contracts with the American Society of Composers, Authors and Publishers, or complainants, or others similarly situated, and from prosecuting criminally the complainants, their representatives or agents, or any of them, or others similarly situated for doing any act or thing to detect infringements and to enforce their respective rights under the Copyright Act in the Federal Court of the State of Tennessee, or else where, and generally from doing any act or thing to carry out or enforce any of the provisions of said State Statute.

Third: The bond filed by the complainants herein, be and the same hereby is approved.

Done and entered this 1st day of Dec., A. D. 1938.

Xen. Hicks, Circuit Judge. John J. Gore, District Judge. Geo. C. Taylor, District Judge.

The undersigned, waiving findings of fact and conclusions of law, hereby consents to the entry of the above order and admit due and timely service of notice of hearing of the motion for temporary injunction.

Roy H. Beeler, Attorney-General of the State of Tennessee, appearing on behalf of himself individually and as Attorney-General of the State of Tennessee, and on behalf of the Governor of the State of Tennessee, and on behalf of all other defendants herein.

[fol. 155]

EXHIBIT Q

Affiliated Societies

Sociedad Argentina de Autores y Compositores de Musica, Buenos Aires, Argentina.

Staatlich Genehmigte Gesellschaft der Autoren, Komponisten und Musikverleger, Vienna, Germany.

Nationale Vereniging Voor Auteursrecht, Brussels, Belgium.

Sociedade Brasileira de Autores Theatraes, Rio de Janeiro, Brazil.

Association Cooperative Bulgare pour la Protection des Droits d'Auteurs, Sofia, Bulgaria.

Ochranne Sdruzeni Autorske, csl. Skladatelu Spisovatelu a Nakladatelu Hudebnich, Prague, Czecho Slovakia. Internationalt Forbund Til Beskyttelse af Komponistrettigheder i Danmark, Copenhagen, Denmark.

The Performing Right Society, Ltd., London, England. Saveltajain Tekijanoikeustoimisto Teosto, Helsinki, Finland.

Societe des Auteurs, Compositeurs et Editeurs de Musique, Paris, France.

Stagma—Staatlich Genehmigte Gesellschaft zur Verwertung Musikalischer Urheberrechte, Berlin, Germany.

Magyar Szovegirok, Zeneszerzok, es Zenemukiadok Szovetkezete, Budapest, Hungary.

Societa Italiana Degli Autori ed Editori, Rome, Italy. Udruzenje Jugoslavenskih Muzickih Autora, Zagreb, Jugoslavia.

Norsk Komponistforenings Internasjonale Musikkbyra, Oslo, Norway.

Sociedade de Escritores e Compositores Teatrais Portugeuses, Lisbon, Portugal.

Societatea Compozitorilor Romani, Bucharest, Rumania. Sociedad General de Autores de Espana, Madrid, Spain. Foreningen Svenska Tonsattares Internationella Musikbyra, Stockholm, Sweden.

Schweizerische Gesellschaft Fur Auffuhrungsrechte, Zurich, Switzerland.

[fol. 156] List of Members of the American Society of Composers, Authors and Publishers

Publishers

A B C Music Corporation
A B C Standard Music
Publications, Inc.
Berlin, Irv., Standard
Mus. Corp.
Abrahams, Maurice, Inc.
Ager, Yellen & Bornstein,
Inc.
Algred Music Co., Inc.

Algred Music Co., Inc.
Feature Music Syndicate
Lowe-Goulston, Inc.
Manus Music Co., Inc.
Piantadosi, Al., Music
Publisher

Rosey, Geo., Band &
Orch. Catalog
Song Creators
Allen, Thornton W., Co.
Amsco Mus. Sales Co., Inc.
Ascher, Emil, Inc.
Brooks & Denton
Empire Music Co.
Royal Music Co.

Barnhouse, C. L., Inc. Baron, M., Inc. Belwin, Inc. Berg, S. M.

Publishers—Continued

Berlin, Irving, Inc. Birchard, C. C., & Co. Bond, Carrie Jacobs, & Son Boston Music Company Hatch Music Company Peate Music Co. Thompson, C. W., Co. Briegel, Geo. F., Inc. Dillon, Carl Music Co. Broadway Music Corporation Artmusic, Inc. Empire Music Co., Inc. York Music Co., The Brooks Music Pub. Co. Browne, Ted, Music Co.

Cinema Music Co.

Caesar, Irving Caesar, Irving, Inc. Century Music Pub. Co. Chappell & Co., Inc. Chappell-Harms, Inc. Church, John, Co., The Circle Music Publications, Inc. Coleman, Robert H. Composers' Music Corp. Crawford Music Corporation DeSylva, Brown & Henderson, Inc. Green & Stept Yellen, Jack, Inc. Curtis, L. B., Music Pub. Van Alstyne & Curtis

Davis, Joe, Inc.
Aloha Music Co.
Georgia Music Co.
Triangle Mus. Pub. Co.,
Inc.

Denton & Haskins Corp. Ditson, Oliver, Co., Inc. Donaldson, Douglas & Gumble, Inc.

Elkan-Vogel Co., Inc
Evans Music Company
Exclusive Publications, Inc.
Bloom, Harry, Inc.
Lawrence Music Publishers, Inc.
Milsons Mus. Pub. Corp.

Famous Music Corporation Feist, Leo, Inc. Brown, Nacio Herb, Inc. Fillmore Music House Fischer, Carl, Inc. Oxford University Press Fischer, J., & Bro. Fisher, Fred, Music Co., Inc. Fitzsimons, H. T., Company Flammer, Harold, Inc. Luckhardt & Belder Foley, Charles Forster Music Publisher, Inc. Fox, Sam, Publishing Co. Pallma Music Publishers, Inc.

Galaxy Music Corp.
Gamble Hinged Music Co.
Wulschner Music Co.
Gem Music Corporation
Conrad, Con, Music Pub.,
Ltd.
Georgeoff, Evan, Mus. Pub.

Co.
Gershwin Pub. Corp.

Gilbert, L. Wolfe, Music Publishing Company

Publishers-Continued

Goodman Music Co., Inc. Handman & Goodman, Inc.

Handman, Kent & Goodman, Inc.

Universal Music Co., Ltd. Gordon, Hamilton S., Inc. Gray, H. W., Company Green & White, Inc.

Hall-Mack Company
Geibel, Adam, Music Co.
Handy Bros. Music Co.,
Inc.
Harms, Inc.
Harms, T. B., Company
Harris, Charles K., Music
Pub.
Homeyer, Chas. W., & Co.,

Hope Publishing Company
Bigelow-Main-Excell Co.
Excell, E. O., Co.
Tabernacle Pub. Co.
Huntzinger, R. L., Inc.

Italian Book Co.

Jacobs, Walter, Inc.
Abt, Valentine
Bates & Bendix
Bendix, Theodore
Eby, Walter M.
Farrand, Van L.
Gay, Mace, Catalog
Jaques, Percy
Musiclovers Co.
Partee, C. L., Music Co.
Shattuck, B. E.
Virtuoso Music School
Williams, Ernest S.
Jenkins Music Company

Jones, Isham, Music Corp. Jungnickel, Ross, Inc.

Kalmar & Ruby Music Corp. Kay & Kay Music Pub. Corp.

Franklin, John, Music Co. Keane, Michael, Inc. Kendis Music Corporation

Leslie, Edgar, Inc.
Lewis Music Pub. Co., Inc.
Lincoln Music Corp.
Capano, Frank, Music
Pub.
Lorenz Publishing Co.

Tullar-Meredith Co., Inc. Ludwig Mus. Pub. Co.

Marks, Edw. B., Music Corp. Bergstrom Mus. Co., Ltd. Berliner, Leo E., Pub. Co. Chilton, Forrest S. Dresser, Paul, Pub. Co. Evans (George Honeyboy Evans) Fassio, A. Globe Music Publishing Co. Halle, R. L. Jordan, Julian, Mus. Co. King, Chas. E. Lecuona Music Co.-Cuba Lyceum, Music Co. Metropolitan Music Co. Metz, Theodore, Music Co. Miller, Roy M. Musin, Ovide Penn, Wm. H. Petrie, H. W., Catalog Prelude Mus. Co. Primrose & West Mus. Co.

Publishers-Continued

Recker, Robert, Music Co. Reed, Bert, Catalog Reed & Keller Catalog Seitz, R. F. Shields, Ren Stern, Jos. W., & Co. Vandersloot Music Publishing Co. Wagner & Levien Willis-Woodward Mus. Co. [fol. 157] Marlo Music Corp. Melo-Art Music Publishers Melrose Bros. Mus. Co., Inc. Miller, Bob, Inc. Streamline Editions Miller Music, Inc. Sherman, Clay & Co. Mills Music, Inc. American Composers, Inc. Beck, Mort Clark, Frank, Mus. Co. Daly, Joseph, Mus. Pub. Co. Edwards, Gus, Mus. Pub. Co. Gordon & Rich, Inc. Gotham Attucks Mus. Co. Gotham Mus. Serv., Inc. Jerome, M. K. Jerome & Schwartz Pub.

Kalmar, Puck & Abrahams
Consolidated
Keit Music Corp.
Kornheiser, Phil, Inc.
Morse, Theodore, Music
Co.
Nelson, Jack, Mus. Co.
Stark & Cowan, Inc.

Stept & Powers, Inc.

Co.

Sterling Songs, Inc.
Sunlight Mus. Co., Inc.
Waterson, Berlin &
Snyder Co.
Waterson, Henry, Inc.
Williams, Harry, Mus. Co.
Morris, Joe, Music Co.
Movietone Music Corp.

Nazarene Publishing House Bilhorn Bros. Mus. Co. Lillenas Pub. Co. New World Music Corp.

Olman Music Corporation Down Home Music Co.

Paramount Music Corp.
Popular Melodies, Inc.
Spier & Coslow, Inc.
Paull-Pioneer Music Corp.
Rossiter, Harold, Mus.
Co.

Photo Play Music Co., Inc.
Luz Brothers Mus. Pubs.
Music Buyers Corp.
Piedmont Mus. Co., Inc.
Pond, Wm. A., & Company
Ellis, Robin
Presser, Theodore, Company

Quincke, W. A., & Company

Red Star Songs, Inc.
Allen & Harrison Mus. Co.
Remick Music Corp.
Ricordi, G., & Co., Inc., (of
N. Y.)
Ringle, Dave
Famous Writers Music Co.
Goulden-Leng Music Co.
Krey, Geo. M., Music Co.

Publishers—Continued

Madison Music Co. Sildae Music Pub. Co. Song Creators Music Co. Victory Music Co. World Music Co. York & King Music Co. Robbins Music Corporation Mayfair Mus. Corp. Metro-Goldwyn-Mayer Corp. Sonnemann Mus. Co., Inc. Whiteman, Paul, Publications Wiedoeft, Rudy, Mus. Pub. Co. Rodeheaver Co., The Rossiter, Will Roy Music Co., Inc. Rubank, Inc. Carlson, M. L. Finder & Urbanek Victor Music Co.

Santly-Joy-Select, Inc. Santly Bros.-Joy, Inc. Select Music Publications, Inc. Saunders Publications Schirmer, G., Inc. Heffelfinger, R. W. Sanders-Weiss, Inc. Schroeder & Gunther, Inc. Schuster & Miller, Inc. Kornheiser-Gottler, Inc. Kornheiser-Schuster, Inc. Shapiro, Bernstein & Co., Inc. Skidmore Music Co., Inc. Southern Music Pub. Co., Inc. Acme Music Pub. Co. Bleyer, Archie, Inc.

Blues Music Co.

Bradford, Perry, Inc.
Bradford, Perry, Music
Co.
Palmer, Robert, Music
Pub. Co.
Spier, Larry, Inc.
Helf & Hager Co.
McKinley Music Co.
Root, Frank K., & Co.
Sprague-Coleman
Stasny Music Corp.
Bibo-Lang, Inc.
Stasny-Lang, Inc.
Summy, Clayton F., Co.
Superior Music, Inc.

Tesio, P., & Sons
Burke Doyle Music Co.
Major Music, Inc.
Tesio-Major

Victoria Publishing Co.
Villa Moret, Inc.
Vogel, Jerry, Music Co., Inc.
Crumit, Frank, Songs Co.
Haviland, F. B., Pub. Co.
Worth, Geo. T., & Co.
Volkwein Bros., Inc.
Bellfield Pub. Co.
Von Tilzer, Harry, Music
Pub. Co.

Weil, Milton, Mus. Co., Inc.
White-Smith Mus. Pub. Co.
Williams, Clarence, Music
Pub. Co., Inc.
Willis Music Company
Witmark, M., & Sons
Wood, B. F., Music Co.
Words & Music, Inc.
Davis, Coots & Engel, Inc.
Engel, Harry, Inc.
Keit-Engel, Inc.

[fol. 158] List of Members, Composers and Authors

Aarons, Alfred E., Est. of Aborn, Morris Abrahams, Maurice, Est. of Achron, Joseph Ackley, B. D. Adams, A. J. Adams, Frank R. Adams, Stanley Adamson, Harold Adlam, Basil G. Adlam, George B. Ager, Milton Ahlert, Fred E. Akimeuko, Ivan Akst, Harry Allan, D. B. Allen, Ben D. Allen, Francis J. Allen, Thornton W. Allison, Robert Alter, Louis Altman, Arthur Ambel, Albert Ambrosio, W. F. Ames, Francis Anderson, Frank H., Jr. Anderson, Lily Strickland Anderson, Maxwell Anderson, R. Alex Andrews, Maggie Andrews, Mark Archer, Harry Arlen, Harold Armour, Kathleen Armstrong, Harry Arndt, Felix, Est. of Arnheim, Gus Arthur, Mack Ascher, Emil, Est. of Atherton, Brainard Atteridge, Harold, Est. of Auer, Leopold, Est. of

Austin, Gene Austin, Robert E. Autry, Gene Axt, William Ayres, Frederic, Est. of

Baer, Abel Bainbridge, Katharine Baker, Phil Balikov, S. Ball, Ernest R., Est. of Ballard, Francis Drake Ballard, Pat Balogh, Erno Banks, Arnold Barber, Beth Barnett, Alice Baron, Maurice Barr, G. A. Barrett, Mort Barris, Harry Barron, Ted Bartholomae, Philip H. Bartholomew, Marshall Barton, Leslie Baskette, Billy Bassett, Karolyn Wells, Est. of Bateman, Richard Baum, Arthur T. Baxter, Lionel Baxter, Phil Bayha, Charles A. Beach, Mrs. H. H. A. Beans, Gus Beatrice, F. Bedell, Robert Leech Belden, George T. Belledna, Alex Bennard, George Bennett, Frederick Douglas Bennett, George J.

Bennett, Harold Bennett, Robert Russell Benson, Margaret Benter, Charles Berg, David Berg, Harold Berger, Leon Bergh, Arthur Bergthal, Hugo Berlin, Irving Bernard, Al Bernard, Felix Bernie, Ben Bernier, Buddy Bibo, Irving Bickford, Herbert Billings, Ha! Bilotti, Anton Black, Ben Black, Frank J. Blake, Eubie Blake, James W., Est. of Blaufuss, Walter Blitzstein, Marc Bloch, Ernest Bloom, Marty Bloom, Rube Blossom, Henry, Est. of Blue, Gil B. Boger, Robert C. Boland, Clay A. Bond, Carrie Jacobs Borissoff, Josef Bornschein, Franz C. Botsford, George Bourdon, Rosario Boutelje, Phil Bowers, Frederick V. Bowers, Robert Hood Bowman, Brooks, Est. of Bradford, Bessie Bradford, James C.

Bratton, John W. Breau, Lew., Est. of Branscombe, Gena Brashear, Charles Brennan, James A. Brennan, J. Keirn Breuer, Ernest Bridges, Ethel Britt, Addy, Est. of Brockman, James Brockton, Lester Brook, Roger Brooks, Harry Brooks, Shelton Brown, Al. W., Est. of Brown, A. Seymour Brown, Barnetta, Est. of Brown, Bertrand Brown, Billy Brown, George Brown, George Murray Brown, Keith Crosby Brown, Lew Brown, Nacio Herb Browne, J. Lewis, Est. of Browne, Raymond A., Est. of Browning, Mortimer Bruhns, George F. W. Bruno, William Bryan, Alfred Brymn, J. Tim Buchanan, Annabel Morris Bucharoff, Simon Buck, Gene Buck, Richard Henry Bucks, Arnold Bullock, Walter Bunch, Boyd Burgheim, C. S. Burke, Johnny Burke, Joseph A.

Burleigh, Harry T.
Burnett, Ernie
Burns, Annelu
Burnside, R. H.
Burt, Benj. Hapgood
Burtnett, Earl, Est. of
Burton, Nat
Burton, Val
Burwell, W.
Buzzi-Peccia, A.
Byrnes, James A., Est. of
Byron, Richard

Caddigan, Jack J. Cadman, Charles Wakefield Caesar, Irving Cahn, Sammy Caldwell, Anne Calhoun, George Callahan, J. Will Camdon, Dal Campbell, Elmer Campbell, Florence Capano, Frank Cariljo, Jose Fernandez Carle, Glen Carleton, Bruce Carlo, Monte Carmichael, Hoagy Carpenter, John Alden Carroll, Earl Carroll, Harry Carter, Elbert F. Carter, Sidney Cassel, Irwin M. Cavanaugh J. Anthony Cavanaugh, James Chapin, Betty Chaplin, Saul

Charig, Philip

Charles, Jean

Charles, Ernest

Charles, Kenneth Chase, Newell Chasins, Abram Chattaway, Thurland Chenoweth, Wilbur Christie, George [fol. 159] Churchill, Frank E. Clafflin, Donald o Clare, Sidney Clark, Amy Ashmore Clark, Elizabeth Clarke, Grant, Est. of Clarke, Herbert L. Clarkson, Geoffrey Clarkson, Harry F. Claypoole, Edward B. Cleary, Michael H. Clifford, Gordon Clinton, Larry Clique, Henri Cobb, Lotta Cobb, Will D., Est. of Coburn, Richard Cohan, George M. Cohen, Charles Cohn, Chester Colby, Elmer Cole, Bob Cole, Martin Coleman, Byron Collins, Will Confrey, Edw. E. Confrey, Zez Conley, Larry Conn, Chester Conne, Bernice Connor, Pierre Conrad, Con, Est. of Cook, Philip D. Cook, W. Mercer Cook, Will Marion

Cooke, James Francis Cool, Harold Coombs, C. Whitney Cooper, Bud Cooper, Joe Coots, J. Fred Corinne, J. Coslow, Sam Costello, Bartley Cowan, Rubey Cox, Ralph Creamer, Henry, Est. of Creighton, Robert L. Creswell, John D. Crist, Bainbridge Crosby, Bing Cross, Daniel Crumit, Frank Cugat, Xavier Cunningham, Paul Curran, Pearl G. Curtis, Billy Curtis, Loyal Curtis, Virginia Cushing, Catherine C. Czerwonky, Richard

Dabney, Ford Dale, Norwood Daly, Joseph M. Damrosch, Walter D'Angelo, Carlo Daniels, Charles N. Daniels, Mabel Danmark, Ribe D'Arese, Roscoe Darnell, Shelby David, Benj. David, Lee David, M. David, Mack Davidson, Morey Davies, Mary Carolyn

9

Davis, Benny Davis, John Carlyle Davis, Lou Dawson, Eli De Berton, Roland De Brant, Cyr De Castro, Arturo De Costa, Harry Deems, Will Deer, Eva D. De Francesco, L. E. De Koven, Reginald, Est. of DeLamarter, Eric De Lange, Edgar De Leath, Vaughn De Leone, Francesco B. Delf, Harry Delille, Francis De Longpre, Michael Denni, Lucien Denniker, Paul Deppen, Jessie L. De Rose, Peter De Sylva, Bud De Sylva, B. G. De Sylva, George Gard Dett, R. Nathaniel Deutsch, Emery De Ville, Paul De Voll, Cal Dewey, W. L. Dick, Dorothy Dietz, Howard Dillon, Fannie C. Dillon, Will Dimes, Dinny Divina, Elli Dixon, Mort Dober, Con Donaldson, Walter Donaldson, Will Donnelly, Andrew Donnelly, Dorothy, Est. of

Dougherty, Dan Douglas, Jessie Dowling, Eddie Drake, Milton Drew, Don Dreyer, Dave Drumm, George Dubensky, Arcady Dubin, Al Du Bynne, Alfred Duke, Vernon Duncan, Wm. C. Dungan, Olive Dunkley, Ferdinand Dunn, James P., Est. of Dunn, Joe ... Dunning, Martin Dupont, Paul Durham, Wesley Duryea, Jeanette Duval, Carlos Dyson, Hal

Earl, Mary East, Milford Eaton, Jimmy Eberhart, Nelle Richmond Edelheit, Harry Edmonds, Shepard N. Edwards, Broughton Edwards, Clara Edwards, George Edwards, Gus Edwards, J. V. Edwards, Leo Egan, Jack Egan, John C. Egan, Raymond B. Egner, Philip Ehrlich, Sam, Est. of Elie, Justin, Est. of Eliscu, Edward Ellington, Duke

Ellis, Lee
Elman, Mischa
Elwood, Fred
Emmerich, Bob
Emmerich, Robert D.
Enders, Harvey
Engel, Carl
English, Granville
Erdman, Ernie
Esrom, D. A.
Evart, Elmond

Fain, Sammy Fairman, George Fairfield, Frank Fall, Albert Farley, Roland, Est. of Farrar, Geraldine Fay, Stephen Fazioli, Billy, Est. of Federlein, Gottfried H. Feinberg, Sam Fenstock, Belle Ferguson, Bob Fields, Arthur Fields, Buddy Fields, Dorothy Filene, Morton Fillmore, Henry Finley, Lorraine N. Finn, Father Finn, William J. Fiorito, Ted Fisher, Fred Fisher, Mark Fisher, William Arms Fitzgerald, Joan Fitzgerald, Malcolm Flagler, Robert S., Est. of Flatow, Leon Fleeson, Neville Fletcher, Archie Floyd, S. J.

Flynn, Allan Ford, Tom Foresio, D. Forrest, Chet Forster, Dorothy Forsyth, Cecil Foster, Fay Fowler, B. Sherman Fox, J. Bertram Fox, Oscar J. Francis, Arthur Francis, Herbert Francois Franklin, Dave Franklin, Howard Franklyn, Blanche Franko, Nahan, Est. of Frazzini, Al Fredal, J. Fredericks, Alfred Freed. Arthur [fol. 160] Freed, Isadore Freed, Ralph Freer, Eleanor Everest Freudenthal, Joe Frey, Hugo Fried, Martin Friedland, Anatole, Est. of Friend, Cliff Friml, Rudolf Frisch, Billy Fullerton, H.

Gabriel, Mercedes
Gahm, Joseph, Est. of
Gaines, Samuel Richard
Galloway, Tod B., Est. of
Gardner, Samuel
Gardner, William H., Est. of
Garrett, Lloyd Fry
Gasbrit, Obie
Gaskill, Clarence

Gaul, Harvey B. Gault, Elmer. Gay, Byron Geer, Leonore Gensler, Lewis E. Gerard, Richard Hirsch Gerber, Alex Gershwin, George, Est. of Gershwin, Ira Giannini, Vittorio Gibb, Robert W. Gibbs, Arthur H. Giddings, Clarice Giesler, Carl Gifford, H. Eugene Gilbert, L. Wolfe Gillespie, Haven Gillespie, Marian E. Ginsberg, Sol. Glick, Jesse G. M. Glogan, Jack Glynn, Rowena Godowsky, Leopold, Est. of Goering, Al Goetz, E. Ray Gold, Joe Golden, Ernie Golden, John Goldman, Edwin Franko Goldsworthy, W. A. Good, Bart Goodman, Alfred Goodhart, Al Goodman, Frank Goodman, Lillian Rosedale Goodwin, Joe Goold, Sam, Est. of Gordon, Curtis Gordon, Mack Gorney, Jay Gottler, Archie

Goudon, Pierre

Gould, Albert

Gould, Morton Graff, George Grainger, Percy Aldridge Granados, Felipe Grant, Bert Grant, Cal Grant, Charles N., Est. of Grau, Franz Gray, Alfred Gray, Simeon Green, Bud Green, John W. (Johnny) Greenberg, Abner Greer, Jesse Grenet, Eliseo Greve, Francois Grever, Maria Grey, Clifford Grey, Frank H. Grey, Laverne Grey, Vivian Grier, Jimmie Griffin, Gerald Griffis, Elliot Griselle, Thomas Grofe, Ferde Grossman, Bernie Grosvenor, Ralph L. Gruenberg, Louis Grunberg, Jacques Grunn, Homer Guion, David W. Gulesian, Grace Warner Gulesian, Mrs. M. H. Gumble, Albert Gunsky, Maurice J. Gurewich, Jascha, Est. of Gusman, Meyer Gwynn, Francis

Hadler, Rosemary Hadley, Henry, Est. of Haenschen, Walter G.

Hageman, Richard Hagen, Milt Hager, Clyde Hann, Carl, Est. of Haid, Billy Haig, Bernhard Hainsworth, Richard Hajos, Karl Hale, Donald Hall, Fred Hall, Ray Hall, Wendell Hall, Wendell W. Hall, Wendell Woods Halley, Bill Hamblen, Bernard Hamilton, Arthur Hammerstein, Oscar, 2nd Hampton, Roxanne Hancock, John Handman, Lou Handy, Will Handy, William C. Hanighen, Bernard D. Hanley, James F. Hanlon, Bert Hanna, Jack Hanson, Howard Harbach, Otto A. Harburg, E. Y. Hare, Leslie Harling, W. Franke Harper, Marjorie Harris, Charles K., Est. of Harris, Edward Harris, Harry Harris, Roy Harris, Victor Harris, Will J. Harrison, Charles F. Hart, Lorenz Hartley, Harry

Hartman, Don

Hartmann, Arthur Hastings, Paul Hathaway, Jane Haubiel, Charles Haus, Johann Havlin, Will Hawley, C. B., Est. of Hawthorne, Kathryn Hayes, Al Hazzard, John E., Est. of Heagney, William H. Heifetz, Jascha Hein, Silvio, Est. of Henderson, Charles E. Henderson, Ray Henri, F. Henry, Clare Kummer Henry, S. R. Herbert, Charles K. Herbert, Jean Herbert, Victor, Est. of Herman, Pinky Herscher, Louis Herson, Frank E. Hess, Cliff Heyman, Edward Heyward, Du Bose Heyward, Nancy Heywood, Donald Higginson, J. Vincent Higginson, Richard Hill, Alexander, Est. of Hill, Billy Hill, Charlie Hill, William J. Hilliard, Harry Hills, Frank Hirsch, Louis A., Est. of Hirsch, Walter Hobart, George V., Est. of Hoffman, Al Hoffman, Maurice Holden, Sidney

Holiner, Mann Hollander, Frederick Hollingsworth, Thekla Holzer, Lou Holzmann, Abraham, Est. of Homer, Sidney Hooker, Brian Hoover, Joe Horne, Abel Hoschna, Karl, Est. of Hosmer, Lucius, Est. of Hough, Will M. Howard, Dick Howard, John Tasker Howard, Joseph E. Howell, Frank Hubbell, Raymond Hucklenutt, Inky Hudson, Roberta Hudson, Will Huerter, Charles Hueston, Billy Hughes, Langston Hughes, Rob Hughes, Rupert Huhn, Bruno Hupfeld, Herman Hyde, Alex

Ingraham, Roy Irwin, Will Irwin, William C. K. Irving, Washington William Ivers, Harold

[fol. 161]
Jackson, F.
Jacobi, Frederick
Jacobs, Al
Jaffe, Moe
James, Billy
James, Philip
James, S. Walter

James, Theodore Janis, Elsie Janssen, Werner Jasmyn, Joan Jason, Will Jenkins, Gordon Jentes, Harry Jerome, Jerome Jerome, Larry Jerome, Lawrence Jerome, M. K. Jerome, Richard Jerome, William, Est. of Jessel, George Johns, George Johnson, Arnold Johnson, Edward T. Johnson, George Johnson, Horace Johnson, Howard E. Johnson, J. C. Johnson, James P. Johnson, J. Rosamond Johnson, James Weldon, Est. of Johnston, Arthur Johnstone, Gordon, Est. of Johnstone, Thomas A. Johnstone, Will B. Jolson, Al Jonas, Julius Jones, Chris Jones, Gregory Jones, Isham Jones, Jocko Jones, Stephen Jones, Tom

Kackley, Bob Kahal, Irving Kahn, Grace Le Roy Kahn, Gus

Juan y Dlorah

Kalani, Malie Kalman, Erno Kalmar, Bert Kaplan, Saul Karoly, Gondov Kassel, Art Katscher, Robert Kaufman, Mel B., Est. of Kawelo, Icane Keiser, R. Keithley, E. Clinton Kempinski, Leo A. Kenbrovin, Jean Kendall, Don Kendis, James Kennedy, Bruce Kennedy, H. Kenny, C. Francis. Kenny, Charles F. Kenny, Nick A. Kent, Richard Kent, Walter Kerker, Gustave, Est. of Kern, Jerome Kernell, Wm. B. Kernochan, Marshall Kerr, Harry D. Kiehl, Heinrich Kilenyi, Edward King, Al King, Jack King, Joe King, Robert King, Robert A., Est. of King, Wayne Kingsford, Charles Kingsley, Robie Kingsley, Rutherford Kisco, Chas. W. Kisco, Charley Klages, Raymond W. Klein, David

Klein, Lou

Klemm, Gustav
Klenner, John
Klickmann, F. Henri
Kline, Dick
Knox, Helen
Koehler, Ted
Kogen, Harry
Kortlander, Max
Kountz, Richard
Kramer, A. Walter
Kraushaar, Charles
Kreisler, Fritz
Krouse, H. Sylvester
Kummer, Clare
Kurtz, Manny

Lada, Anton Lada, Raymond Anton La Forge, Frank La Frenier, Emma P. Lakay, Rudy Lake, Mayhew Lester La Marr, Glen Lamont, Arthur Lamont, A. B. Lampe, J. Bodewalt, Est. of Lane, Burton Lane, Eastwood Lange, Arthur Lange, Henry W. Lannin, Paul Lardner, Ring, Est. of La Rocca, D. James Laska, Edward Lauver, David Lawlor, Chas. B., Est. of Lawnhurst, Vee Lawrence, Fred Lawrence, Jack Layton, Turner Leazer, Louis Le Baron, William Lee, Annabelle

Lee, Dorothy Lee, Mandy Lee, Marvin Lee, Nancy Lee, Norah Leigh, Norman Leith, Leonore Lemare, Jules Lenikov, Ivan Lennell, Dodd Leonard, Eddie Leonard, Emil Lerner, Sammy Le Roy, Margaret Leslie, Edgar Lesser, S. Lester, Ida Levant, Oscar Leveen, Raymond Levenson, Boris Levey, Harold Levinson, Jerry Lewis, Al Lewis, Alan Lewis, Bobby Lewis, Harold Lewis, Roger Lewis, Samuel M. Lewis—Williams Ley, Benton Lief, Max Lief, Nathaniel Lieurance, Thurlow Lillenas, Halder Lind, Peter Link, Harry Little, George A. Little, Jack Livingston, Bill Livingston, Jerry Livingstone, Mabel Lloyd, Lewellyn Locke, Harold

Lockhart, Eugene
Loeb, John Jacob
Loesser, Frank
Logan, Fred'k Knight,
Est. of
Logan, Virginia K.
Loman, Jules
Lombardo, Carmen
Lorenz, Edmund S.
Lorenz, Ellen Jane
Lounsbury, Walter
Lovell, Richard
Lowell, J. Edgar
Lyman, Abe
Lycns, Frank

MacBoyle, Darl
MacDermid, James G.
MacDonald, Ballard, Est. of
MacDonough, Glen, Est. of
Mac Dowell, Edward, Est. of
Mac Fadyen, Alexander,

Est. of MacGimsey, Robert Mack, Cecil Mack, Jay Mack, Jerry Madden, Edward Madison, Nat Maduro, Charles Maganini, Quinto Magidson, Herbert Magine, Frank Mahoney, Jack Maley, Florence Turner Malneck, Matt Malotte, Albert Hay Maltin, Bernard Mana-Zucca, Mme. Manholz, A. Manney, Charles F. Manning, Kathleen L. Mapleson, Anna

March, Russell Marion, George, Jr. Marion, Will Marks, Gerald Marsden, Philip Marshall, Henry I. [fol. 162] Martel, John Martens, Fred'k H., Est. of Martin, Bob Martin, Lem Mason, Daniel Gregory Mathis, Jules Matteson, John Somers Mathews, H. Alexander Maxfield, Stanley May, H. I. McCarron, Chas., Est. of McCarthy, Charles J. McCarthy, Joseph McConnell, George B. McCree, Junie, Est. of McDonald, Harl McHugh, Jimmie McKee, Frank W. McKenna, William McKinley, Elwood McLaughlin, John McPhail, Lindsay McPherson, R. C. Media, Jay Melrose, Walter Melville, E. B. Melville, Paul Mencher, Murray Mendelsohn, Jacques Mendelsohn, J. Arko Mendoza, David Menges, Eliz. Menler, Karl Mercer, John Meredith, L. H.

Merle, George

Merrill, Blanche Meskill, Jack Metz, Theo. A., Est. of Meyer, George W. Meyer, Joseph Meyers, Billy Miles, C. Austin Miles, Nat Miles, Walter E. Millay, Edna St. Vincent Miller, Bob Miller, Ned Mills, F. A. Mills, Irving Mills, Kerry Milne, R. L. Mistowski, Mischa Mitchell, Humphrey Mitchell, Sidney D. Mizzy, Vic Moll, Billy Monaco, James V. Monday, Arthur Monroe, Jack Montaine, R. A. Montani, Nicola A. Montmorency, Percival Mooney, Harold Moore, Arthur Moore, Douglas Moore, Elizabeth Evelyn Moore, Francis Moore, Hartley Moore, Joe Moore, John Moore, Leslie F. Moore, McElbert Moran, Edward P. Morelli, Pietro Moret, Neil Morey, Larry Morgan, Bern Morgan, Carey

Morgan, J. P. Morgan, Robert Morgan, Russ Moritz, Edvard Morris, Edward Morris, Melville Morrison, R. L. Morse, Arthur Cleveland Morse, Dolly Morse, Dorothy Morse, Theodora Morse, Theodore, Est. of Moskowitz, R. A. Motzan, Otto, Est. of Mozenaiko, D. Muller, Rudi Murchison, Kenneth M., Est. of Murphy, Owen Murphy, Stanley, Est. of Murray, Frank Murray, Jack Murray, John Myers, Richard Mysels, Sammy

Neiburg, Al. J. Neil, Harrison Nelson, Ed. G. Nemo, Henry Neuman, M. Nevin, Arthur Nevin, Ethelbert, Est. of Nevin, George B., Est. of Nevin, Gordon Balch Newell, Roy Newman, Alfred Newman, Charles Nichols, Alberta Nichols, Ken Nield, Ernest Noble, David Noble, John Avery

Nolte, Roy E.
Nomis, Adrian
Norman, Edward W.
Norman, Pierre
Northey, Carrie
Norworth, Jack
Nuffert, Oscar T.
Nyles, W. A.

Oakland, Ben O'Dea, A. Caldwell, Est. of O'Flynn, Charles O'Hara, Geoffrey Ohman, Phil O'Keefe, James O'Keefe, Lester Olcott, Chauncey, Est. of Olman, Abe Olmstead, Clarence Opperheim, David Orlob, Harold Osborne, Nat Osgood, H. O., Est. of Otvos, A. Dorian Owens, Harry Oyett, Dayne

Page, Horace Paley, Herman Palmer, Jack Pardette, Neil Parenteau, Zoel Paridon, Roxana Parish, Mitchell Parker, Dan Parker, Horatio, Est. of Pascoe, Richard, W. Paskman, Dailey Pasternack, Josef Paul, Stuart Paull, E. T., Est. of Pease, Harry Peck, Gerald

Peck, Raymond W. Peery, Rob Roy Penn, Arthur A. Pennington, John Perkins, Frank S. Perkins, Henry Perkins, Ray Perkins, Wilton Perrin, Jacques Perry, Sam A., Est. of Peters, Wm. Frederick, Est. of Petkere, Bernice Phillips, Fred Piantadosi, Al. Piastro, Josef Pickett, Robert E. Pierce, A. Pincus, Herman Pinkard, Maceo Pinkert, Herb Pirani, Eugenio Di, Est. of Pochon, Alfred Polla, W. C. Pollack, Lew Pollock, Muriel Ponce, Phil Porter, Cole Porter, Lew Porter, Paul Powell, John Powell, Teddy Powell, W. C. Price, Georgie Price, Sybil Yvonne Prior, H. R. Prival, Max Prokoff, Alexine

Rachmaninoff, Sergei

Prokoff, Ivan

Pryor, Arthur Purcell, Gilbert

Rafael, Walter Rainger, Ralph -Rand, Harry Randolph, John Carroll Rapaport, Ruth, Est, of Rapee, Erno Rasbach, Oscar Raskin, William Raymond, Harold Raymond, Lester Razaf, Andy Reddick, William Redmond, John Reed, David Reginald, Lawrence Rehfeld, Julian Reichner, Bix Reichner, S. Bickley Rellim, Trebor Renn, Charles [fol. 163] Renton, Victor Repper, Charles Retlaw, S. C. Revel, Harry Reynard, Jules Reynolds, Frank Reynolds, Herbert Rezlit, Albert Rice, Gitz Rich, Gladys Rich, Max Richman, Harry Richmond, M. Riesenfeld, Hugo Ringle, Dave Roaming Ranger, The Robbins, Harry Robe, Harold Roberto, Carlos Roberts, A. Roberts, Allan Roberts C. Luckey

Roberts, Charles J. Roberts, K. Roberts, K. A. Roberts, Kathleen A. Roberts, Lee S. Roberts, Steve L. Robin, Leo Robinson, J. Russel Robison, Carson J. Robison, Willard Robyn, Alfred G., Est. of Roder, Milan Rodgers, Jimmie, Est. of Rodgers, Richard Rogers, James H. Rogers, John Roland, Frank Rolfe, Walter Roma, Caro, Est. of Romberg, Sigmund Rome, Harold J. Ronell, Ann Roosevelt, T. Rose, Billy Rose, Ed, Est. of Rose, Fred Rose, K. Fred Rose, Vincent Rosemont, Walter L. Rosenberg, G. M. Rosenstock, L. Rosenthal, M. L. Rosey, George, Est. of Rosey, Joe Rosoff, Charles Rothberg, Bob, Est. of Rourke, M. E., Est. of Rowe, Sidney Rubens, Maurie Ruby, Harry Ruby, Herman Rudd, Lee

Rupp, Carl

Russell, Alexander Russell, Benee Russell, Joseph Russell, S. King Russell, Sydney King Russo, Dan Ryan, Ben Ryder, Sturkow, Mme.

Saar, Louis Victor, Est. of Saenger, Gustav, Est. of St. Clair, Floyd J. St. Minnesota, Paul Salta, Menotti Salter, Mary Turner, Est. of Saminsky, Lazare Samuels, Frank Samuels, Walter G. Sanders, Alma M. Sanders, Joe L. Sanford, Dick Santly, Henry W., Est. of Santly, Joseph H. Santly, Lester Savino, Domenico Schad, Walter C. Schaeffer, Mary Schafer, Bob Schertzinger, Victor Schmid, Adolf Schmid, Johann C. Schmidt, Erwin R. Schoebel, Elmer Scholl, Jack Schonberg, Chris Schonberger, John Schuster, Ira Schuster, Joseph Schwartz, Arthur Schwartz, Bernie Schwartz, Jean

Schwartz, Nat

Schwarzwald, Milton

Scott, John Prindle, Est. of Scott, Raymond Sen, Yama Seng, Ofar Sessions, Roger Severn, Edmund Seymour, S. Seymour, Tot Shade, William Shadwell, William B. Shand, Terry Shane, Tom Shannon, James Royce Shapiro, Ted Shay, Larry Shelley, Harry Rowe Sherman, Al Sherman, Tobe Sherwin, Sterling Shick, Hans Shields, Ren., Est. of Shilkret, Jack Shilkret, Nathaniel Shuman, Francis K. Siegel, Al Siegel, Monty. Sigler, Maurice Sigler, Mose Signorelli, Frank Silberta, Rhea Silver, Abner Silver, Frank Silverman, Al Silvers, Louis Silvers, Sid Silvio, Alberto Simon, Edward G., Est. of Simon, Nat Simon, Robert A. Simon, Walter C. Simone, Nato Simons, Eeymour B.

Simpson, George

Singer, Dolph Singer, Joe Siras, John Sirmay, Albert Sissle, Noble Sizemore, Arthur L. Skidmore, Will E. Skilton, Charles S. Sloane, A. Baldwin, Est. of Smith, Chris Smith, Clay, Est. of Smith, Edgar, Est. of Smith, Harry B., Est. of Smith, H. Wakefield Smith, Joseph Smith, Robert B. Smith, Sol Smith, Walter Wallace Snow, Henry Snyder, Ted Sodero, Cesare Solman, Alfred, Est. of Sosnik, Harry Sousa, John Philip, Est. of Sowerby, Leo Spaeth, Sigmund Spalding, Albert Speaks, Oley Spencer, Fleta Jan Brown, Est. of Spencer, Herbert Spencer, Otis Spencer, Robert E. Speroy, Robert Spier, Harry R. Spier, Larry Spina, Harold Spitalny, Maurice Spross, Charles Gilbert Squires, Harry D. Stamper, Dave Stanley, F. Stanley, Jack, Est. of

Stanley, Thornton Stanton, Francis Stanton, Frank L., Est. of Stearns, Herbert Steiger, Jimmy, Est. of Stein, Jules K. Steiner, Max Stephens, Cliff Stephens, Ward-Stept, Sam H. Sterling, Andrew B. Stern, G. Radcliffe Stern, Henry, R. Stern, Jack Stevens, Alfred Stevens, David Stevens, Robert L. Stewart, Daniel Stickles, William Still, William Grant Stillman, Al Stock, Larry Stocking, Elaine Stoddard, George E. Stoessel, Albert Stone, Billy, Est. of Stone, Harold Stothart, Herbert Straight, Charley Strebor, J. C. Stride, Harry Stringfield, Lamar Strong, Jesse Strong, Julian [fols. 164-167] Stuart, Allan Stults, R. M., Est. of Sturm, Murray Styne, Jule Suede, Vasca Suesse, Dana Sullivan, Alexander C. Sullivan, Henry

Sunshine, Marion Swanstrom, Arthur Sweatman, Wilbur C. Swift, Kay Sykes, Abner Syme, Marty

Talbot, Maurice Taylor, Deems Taylor, Irving Taylor, Otis Tchervanow, Ivor Ted & Josh Terker, Arthur Terris, Dorothy Terry, Robert Huntington Thompson, Harlan Thornton, James, Est. of Tierney, Harry Tinturin, Peter Tobias, Charles Tobias, Harry Tobias, Henry H. Tobini, H. Toch, Ernest Tomlin, Pinky Toresio, D. Tracey, Wm. G. Travis, June Tremblay, Al Trent, Jo Trinkaus, George J. Tscherinoff, Feodor Tucker, John Aloyseus Turk, Roy, Est. of Turner, Anthony Turner, John Twohig, Daniel S. Tyers, Wm. H., Est. of

Valdez, Jose Valdez, Rudy

Van Alstyne, Egbert Van Breit, Carl Vanderpool, Frederick W. Van Heusen, Jimmy Van Holland, Dick Vann, Al Van Norman, Frederic Vecsei, Desider Josef Vene, Ruggero Verges, Joe Vete, Albert Vicars, Harold, Est. of Victor, G. Vincent, Nathaniel H. Vincent, Paul Von Der Goltz, Eric, Jr. Von der Lieth, Leonore Von Tilzer, Albert Von Tilzer, Harry

Wadsworth, Henry Waite, Jack Walker, James J. Walker, Rene Walker, Ronald Wallace, Mildred White Wallace, Paul Wallace, Walter Waller, Fats Waller, Thomas Walsh, J. Brandon Ward, Burt Ward, Edward Ward, Sam Ware, Harriet Warford, Claude Waring, Tom Warren, Cecil Warren, Elinor Remick Warren, Harry Warren, P. C. Washington, Ned Watts, Wintter

Wayne, Mabel Webb, Kenneth S. Webb, Roy Webster, Paul Francis Weeks, Harold Weeks, Wilbur Weidt, A. J. Weill, Irving Weinberg, Chas. Weinberg, Jacob Weldon, Frank Wellesley, Grant Wells, John Barnes, Est. of Wendling, Pete Wenrich, Percy Weslyn, Louis, Est. of West, Eugene West, George Westbrook, Arthur Westphal, Frank C. Wever, Ned Whitcup, Leonard White, Alice White, Clarence Cameron White, Joseph M. Whitemore, Will Whithorne, Emerson Whiting, George Whiting, Richard A., Est. of Whitmore, Robert Wiedoeft, Rudy Wiegand, Henry Williams, Clarence Williams, Joe Williams, Sam Williams, Spencer Williams, W. R. Wilmans, Wilman Wilson, Al Wilson, Buck

Wilson, Duane Wilson, Ira B. Wilson, Irving M., Est. of Wilson, Lawrence Wilson, Mortimer, Est. of Winne, Jesse M. Winternitz, Felix Winters, Ferne Wolf, Daniel Wolfe; Jacques Wood, Cyrus D. Wood, L. Fred Wood, Leo, Est. of Woodin, William H., Est. of Woodman, R. Huntington Woods, Harry M. Wright, Bob Wright, Frank A. Wrubel, Allie Wynn, Charles Wynn, Ed Yellen, Jack Yoell, Larry Yoelson, Asa Yon, Pietro A. Youmans, Vincent Young, Joseph Young Rida Johnson, Est. of Young, Victor (Standard) Young, Victor (Popular) Zamecnik, J. S. Zamora, Julio Zeno, Norman Zimbalist, Efrem Zuera, Ramon HONORARY Bitner, E. F. (deceased) Burkan, Nathan (deceased)

Witmark, Jav

[fol

DE

inte of (the the

of (

for

stit Sta

3

of t Starigh

of i

5 inju

of c with pos ties

tie

No. 12

ENDANTS' MOTION TO DISMISS "FURTHER SUPPLEMENTAL BILL OF COMPLAINT"—Filed October 19, 1939

he defendants, subject to the objections which they have roosed to the filing of the "Further Supplemental Bill complaint" which plaintiffs have asked leave to file, move Court to dismiss said Further Supplemental Bill upon following grounds, viz:

There is no equity in said Further Supplemental Bill Complaint.

Said Further Supplemental Bill discloses no occasion injunctive interference with the operation of the statute plained of.

It plainly appears that the statute complained of conutes a legitimate exercise of the police power of the te of Florida.

It is not made to appear that the statute complained nterferes with any right granted to the plaintiffs or any hem by the Constitution, laws or treaties of the United tes, including the provisions thereof dealing with copyats, or granted to them by the Constitution of the State Plorida.

No irreparable injury is shown such as to require metive relief.

s. 169-289] 6. The facts disclosed in the original bill omplaint show that the plaintiffs do not come into equity a clean hands in that they seek an injunction for the pure of perpetuating their monopolistic price fixing activities activities a Court of equity should lend no aid.

(S.) Geo. Couper Gibbs, Attorney General of Florida; Tyrus A. Norwood, Assistant Attorney General of Florida; Lucien H. Bogs, Jacksonville, Florida; Andrew W. Bennett, Washington, D. C., Attorneys for Defendants. [fol. 290] IN UNITED STATES DISTRICT COURT

ORDER GRANTING LEAVE TO FILE FURTHER SUPPLEMENTAL BILL, ETC.—Filed October 31, 1939.

This cause coming on to be heard, and the same having been argued by counsel for the respective parties, and the Court having inspected the record and the briefs filed;

It is Ordered;

- 1. That complainants' motion for leave to file a further supplemental Bill of Complaint be, and the same hereby is, granted.
- 2. That R. A. Gray, individually and as Secretary of State of the State of Florida, and J. M. Lee, individually and as Comptroller of the State of Florida, be, and they hereby are, added as defendants in this cause.
- 3. That T. E. Duncan, individually and as State Attorney for the Eighth Judicial Circuit, Clyde H. Wilson, individually and as State Attorney for the Twelfth Judicial Circuit, L. D. McRae, individually and as State Attorney for the Fourteenth Judicial Circuit, Phil O'Connell, individually and as State Attorney for the Fifteenth Judicial Circuit, be, and they hereby are substituted as defendants in place and stead of J. C. Adkins, Roy D. Stubbs, John H. Carter, Jr., and Louis F. Maire, respectively, in this cause.
- 4. That the motions of the defendants, (a) to dismiss Bill and Supplemental Bill of Complaint; (b) to dismiss Further Supplemental Bill of Complaint; (c) to strike portions of Further Supplemental Bill of Complaint; (d) to strike all and parts of affidavit of Gene Buck, be and the same hereby are, severally in all respects denied.
- [fol. 291] 5. That the defendants, George Couper Gibbs, individually and as Attorney General for the State of Florida; E. Dixie Beggs, Jr., individually and as State Attorney for the First Judicial Circuit of Florida; O. C. Parker, Jr., individually and as State Attorney for the Second Judicial Circuit of Florida; A. K. Black, individually and as State Attorney for the Third Judicial Circuit of Florida; William A. Hallowes, III, individually and as State Attorney for the Fourth Judicial Circuit of Florida; J. W. Hunter, individually and as State Attorney for the Fifth

Judicial vidually cuit of Attorne Duncan. .Indicial and as Florida torney Worley, Judicial and as Florida for the Rae, ind Judicial as Stat Florida of the S Comptr vidually State of 1937, an [fol. 292 and res bringing equity : against represen interfer complai and res ing to en Florida citizen s the Am lishers. from pr sentativ ated for to enfor

the Fed

general

force an

Circuit of Florida, Chester B. McMullen, indiand as State Attorney for the Sixth Judicial Cir-Florida: Murray Sams, individually and as State of for the Seventh Judicial Circuit of Florida; T. E. individually and as State Attorney for the Eighth of Florida; Murray W. Overstreet, individually State Attorney for the Ninth Judicial Circuit of L. Grady Burton, individually and as State Ator the Tenth Judicial Circuit of Florida; G. A. individually and as State Attorney for the Eleventh Circuit of Florida; Clyde H. Wilson, individually State Attorney for the Twelfth Judicial Circuit of J. Rex Farrior, individually and as State Attorney Thirteenth Judicial Circuit of Florida: L. D. Mcividually and as State Attorney for the Fourteenth Circuit of Florida: Phil O'Connell, individually and Attorney for the Fifteenth Judicial Circuit of R. A. Gray, individually and as Secretary of State tate of Florida, and J. M. Lee, individually and as oller of the State of Florida; and each of them indiand in their respective capacity as officials of the Florida, charged by Chapter 17807, of the Laws of d Chapter 19653, of the Laws of 1939, with the enforcement of the provisions thereof, be enjoined trained until the further order of this Court from directly or indirectly any proceeding at law or in for the purpose of enforcing said State Statutes the complainants and other similarly situated, their ntatives, employees, agents or any of them, and from ring with all existing contracts entered into by the nants and others, including the Society and citizens idents of the State of Florida, and from threatenaforce against any citizen or resident of the State of the penalties of said Statutes in the event such and resident desires to carry out their contracts with erican Society of Composers, Authors and Pubor complainants, or others similarly situated, and osecuting criminally the complainants, their reprees or agents or any of them or others similarly situdoing any act or thing to detect infringements and ce their respective rights under the copyright Act in eral Courts of the State of Florida or elsewhere, and y from doing any act or thing to carry out or eny of the provisions of said State Statutes.

- 6. That defendants be given thirty (30) days from the date hereof to answer.
- 7. This order is made conditional upon complainants filing herein, within thirty (30) days, a bond in the sum of Five Thousand Dollars (\$5,000.00), conditioned upon the payment to the defendants of such costs and damages as may be incurred and suffered by any party who may be found to have been wrongfully enjoined by this order; said bond to be approved by the Clerk of the United States District Court for the Northern District of Florida. Findings of fact and conclusions of law to be filed later.

Done and Ordered this 30 day of October, A. D. 1939.
(S.) J. C. Hutcheson, Jr., Circuit Judge; Louie W. Strum, District Judge; Augustine V. Long, District Judge.

[fol. 293] IN UNITED STATES DISTRICT COURT

No. 12

Supplemental Findings of Fact and Conclusions of Law—Filed November 2, 1939

This Court having entered an interlocutory injunction in the above entitled action on April 5, 1938, restraining enforcement of Chapter 17807, Laws of Florida, 1937, and the complainants having filed (1) a Further Supplemental Bill of Complaint pursuant to leave granted by this Court praying for a supplemental interlocutory injunction restraining enforcement of Chapter 19653, Laws of Florida, 1939; and (2) having moved for order granting such interlocutory injunction upon said Further Supplemental Bill and certain affidavits tendered; and (3) having moved to dismiss defendants' counterclaim in their answer to the Original and Supplemental Bills of Complaint; and the defendants (1) having tendered their offer to limit the issues in the case by submitting without condition to a permanent injunction covering Sections 2-A, 2-B and 6 of Chapter 17807, Laws of Florida, 1937; and (2) having moved to dismiss the Original and Supplemental Bills of Complaint; and (3) having moved to dismiss the Farther Supplemental Bill of Complaint; and (4) having moved to strike portions of the Further Supplemental Bill of Complaint; and (5) having moved to strike the effidavit of Gene Buck; and all of said motions having duly come on for argument and having been heard October 19, 1939, at the Federal Court House in Jacksonville, Florida, this Court hereby makes the following findings of fact and conclusions of law:

[fol. 294]

FINDINGS OF FACT

1. At the 1939 session of the Legislature of Florida, there was enacted a Bill designated as Chapter 19653, Laws of Florida, 1939, which became a law of Florida June 12, 1939. Said statute is referred to hereinafter as the "New Law."

2. Said "New Law" was enacted for the purpose of supplementing said Chapter 17807, Laws of Florida, 1937, hereinafter referred to as the "Old Law".

- 3. The defendant George Couper Gibbs has succeeded the former defendant Cary D. Landis, deceased, as Attorney General of the State of Florida. The defendant R. A. Gray is the Secretary of State of the State of Florida, and the defendant J. M. Lee is the Comptroller of the State of Florida. The defendants T. E. Duncan, Clyde H. Wilson, L. D. McRae and Phil O'Connell are State Attorneys for the Eighth, Twelfth, Fourteenth and Fifteenth Judicial Circuits respectively and have succeeded to the respective offices formerly held by the defendants J. O. Adkins, Roy D. Stubbs, John H. Carter, Jr., and Louis F. Maire.
- 4. The defendants are citizens and residents of the State of Florida, duly elected, appointed and qualified, empowered, directed and charged by the "New Law" with the duty of enforcing the criminal and civil provisions thereof-
- 5. The value of the matter in controversy exceeds Three Thousand Dollars (\$3,000.00), exclusive of interest and costs.
- 6. In view of the existing interlocutory injunction of April 5, 1933, covering the "Old Law", but little, if any, public inconvenience or injury will be occasioned by extending that interlocutory injunction so as to include the "New Law", while to refuse to do so may cause serious injury to the plaintiffs; and the balance of convenience will best be

served by determining the constitutionality of both laws at the final hearing.

[fol. 295]

CONCLUSIONS OF LAW

- 1. The "Old Law" and the "New Law" are primarildirected to the same object, namely, imposing limitations upon the licensing of the right to perform publicly for profit copyrighted music within the State of Florida, and the two statutes involve closely related legal problems.
- 2. There is grave doubt as to the constitutionality of the "New Law" in that: it may result in depriving owners of musical copyrights of the full enjoyment of rights granted them by the copyright laws and treaties of the United States, and may deprive them of the equal protection of the laws.
- 3. The interlocutory injunction of April 5, 1938, covering the "Old Law" should be extended so as to include the "New Law" and the additional and substituted defendants included within its provisions in order to prevent possible loss and injury to the plaintiffs pending final determination by this Court of the constitutionality of the various provisions of both the "Old Law" and the "New Law".
- 4. The speedy disposition of the case will best be served by deferring until final hearing decision on the following: (1) plaintiffs' motion to dismiss defendants' counterclaim; (2) defendants' offer to limit issues; (3) defendants' motion to dismiss Original and Supplemental Bills; (4) defendants' motion to dismiss Further Supplemental Bill; (5) defendants' motion to strike portions of the Further Supplemental Bill; and (6) defendants' motion to strike the affidavit of Gene Buck.
- 5. A bond in the sum of Five Thousand Dollars (\$5,000.00) conditioned upon the payment to the defendants of such costs and damages as may be incurred or suffered by any party found to be wrongfully enjoined by the order entered herein, and conditioned upon the payment to any new licensees of plaintiffs licensed after the entering of the order herein against any injury that may be suffered by [fol. 296] said new licensees, or any of them in the event that the interlocutory injunction entered herein shall not be made permanent.

6. This Court has jurisdiction of this suit, as supplemented by the Further Supplemental Bill of Complaint.

Dated this 2d day of November, A. D. 1939.

(S.) J. C. Hutcheson, Jr., Circuit Judge; Louis W. Strum, District Judge; Augustine V. Long, District Judge.

[fol. 297] IN UNITED STATES DISTRICT COURT

DEFENDANTS' ANSWER TO FURTHER SUPPLEMENTAL BILL OF COMPLAINT—Filed November 17, 1939

Defendants, for answer to the Further Supplemental Bill of Complaint filed herein October 19, 1939, according to the several numbered paragraphs thereof, jointly and severally say:

- 1. Answering paragraph 1, the defendants admit that since the filing of the original and supplemental bills of complaint herein certain material facts have occurred, but deny that those facts are as averred in said Further Supplemental Bill, and aver that such facts are correctly set forth in this Answer, responsively to the subsequent averments of said Further Supplemental Bill.
- 2. Answering paragraph 2, the defendants admit the averments thereof to be true.
- 3. Answering paragraph 3, the defendants deny that since the enactment of the New Law the Society has been compelled to refrain from doing any business in the State of Florida; deny that the Society is not at the present time doing any business in that State or that it is unable to do business in that State, either for the reasons mentioned in said Further Supplemental Bill or otherwise. They aver the truth to be that the Society continues to operate in the State of Florida under its present license contracts with users of music in said State, and is not prevented therefrom by the operation of the New Law.
- 4. Answering paragraph 4, the defendants admit the averments thereof to be true.

[fol. 298] 5. Answering paragraph 5, the defendants admit the averments thereof to be true, except that the motion

filed by the defendants referred to in the last sentence of the last paragraph was a motion to dismiss both the original and supplemental bills of complaint.

- 6. Answering paragraph 6, the defendants admit the averments thereof to be true.
- 7. Answering paragraph 7, the defendants admit the averments thereof to be true.
- 8. (a) Answering paragraph 8 (a), the defendants admit the averments thereof to be true.
- 8. (b) Answering paragraph 8 (b), the defendants are without knowledge or information sufficient to form a belief as the truth of the averment concerning the number of contracts in force between the Society and users of music in the State of Florida, or the averment concerning the number of establishments, if any, publicly performing for profit the musical compositions copyrighted by members of the Society without licenses from the owners. All of the remaining averments of said paragraph are denied.
- 9 to 14, inclusive. Answering paragraphs 9 to 14, inclusive, the defendants are advised that all of the averments thereof are matters of law, and they refer to the statute itself for accurate ascertainment of its requirements.
- 15 (a) Answering paragraph 15 (a), the defendants admit the averments thereof to be true.
- 15 (b) Answering paragraphs 15 (b), the defendants admit the averments thereof to be true except they deny that by reason of the failure of passage of such combination bill, or otherwise, the Original Law remains in full force and effect.
- [fol. 299] 16. Answering paragraph 16, the defendants admit the averments thereof to be true.
- 17. Answering paragraph 17, the defendants deny the averments thereof to be true.
- 18. Answering paragraph 18, the defendants are advised that the averments of this paragraph comprise merely argumentative assertions by plaintiffs of their position upon various legal questions, and that it is unnecessary for the defendants to answer the same.

- 19, 20, 21. Answering paragraphs 19, 20 and 21, the defendants are advised that the averments of these paragraphs are entirely redundant, immaterial, impertinent and scandalous, and that is is unnecessary for them to answer the same.
- 22 (a). Answering paragraph 22 (a), the defendants are without knowledge or information sufficient to form a belief as to the averment concerning the average aggregate amount paid annually by all users of music in the State of Florida for each of the last three years, or the averment that the ratio paid for each county for the years subsequent to 1936 is approximately the same as stated in the original bill of complaint for the year 1936. They deny each and every the remaining averments of said paragraph.
- 22 (b). Answering paragraph 22 (b), the defendants deny that the cost to the Society of compiling the lists and information required to be furnished under the New Law and of paying the filing fee required thereby would be far or at all in excess of \$200,000, and deny that a sum in excess of \$20,000 would be required as a filing fee under the New Law. They admit that the compositions in the repertoire [fol. 300] of the Society are in excess of 100,000 in number. Upon information and belief, they aver that the aggregate cost in filing fees to all members of the plaintiff Society would not exceed \$10,000. Except as hereinabove denied or qualified, the averments of said paragraph are denied.
- 23 (a). Answering paragraph 23 (a), the defendants are advised that the averments thereof are matters of law, and they refer to the statute itself for accurate ascertainment of its provisions and effect.
- 23 (b). Answering paragraph 23 (b), the defendants admit the averments thereof to be true.
- 24. Answering paragraph 24, the defendants deny each and every the averments of said paragraph.
- 25. Answering paragraph 25, the defendants admit that they will perform all duties imposed upon them by the New Law. Except as hereinabove admitted or qualified, the averments of said paragraph are denied.
- 26. Answering paragraph 26, the defendants are without knowledge or information sufficient to form a belief as to the

truth of the averments concerning the number of counties in the State of Florida in which there are establishments publicly performing for profit musical compositions of members of the Society and foreign societies with which the Society has reciprocal contracts. The remaining averments of said paragraph are denied.

27. Answering paragraph 27, the defendants are without knowledge or information sufficient to form a belief as to the truth of the averments thereof, or any of them.

[fol. 301] 28. Answering paragraph 28, the defendants deny each and every the averments of said paragraph.

29. Answering paragraph 29, the defendants are without knowledge or information sufficient to form a belief as to the truth of the averments thereof, or any of them.

30 to 33, inclusive. Answering paragraphs 30 to 33, inclusive, the defendants admit the allegations thereof to be true.

34. Answering paragraph 34, the defendants admit that the defendants therein named are charged with the enforcement of the New Law in their respective circuits. The remaining allegations of said paragraph are denied.

And for a First Affirmative Defense to Said Further Supplemental Bill,

35. The defendants incorporate herein by reference each and every the averments of paragraphs C-1 to C-6, inclusive, of their answer to the original bill of complaint and supplemental bill of complaint herein.

36. The defendants aver that the relief sought by said Further Supplemental Bill is directly in aid of the perpetuation of the price-fixing monopoly thus vested in the plaintiff Society and its members acting collectively and should be denied.

And for a First Counterclaim,

37. The defendants incorporate herein by reference the averments of paragraphs C-2 to C-6, inclusive, of their answer to the original Bill of Complaint and Supplemental Bill of Complaint herein.

[fol. 302] 38. The monopolistic and price-fixing activities of the Society as hereinabove set forth are directly in violation of Chapter 17807, Laws of Florida, 1937, and of Chapter 19653, Laws of Florida, 1939, the enforcement of which statutes is sought to be enjoined by plaintiffs in this proceeding, and such activities are actually being practiced by the Society and its agents within the State of Florida.

Wherefore, defendants demand:

- (1) That the plaintiff, American Society of Composers, Authors and Publishers, be declared (a) to constitute a combination having as one of its objects the fixing of prices or license fees for the combined public performance rights in the separate copyrighted musical compositions owned or controlled by the individual members of such Society or by affiliated organizations; and (b) to be a combination operating in the State of Florida in violation of the provisions of Section 1 of Chapter 17807, Laws of Florida, 1937.
- (2) That a permanent and final injunction be issued against the plaintiffs and each of them and those controlled by the plaintiffs and against each and every member of the American Society of Authors, Composers and Publishers, or any of them, enjoining and restraining them from:
- (a) The making of contracts in this state for the licensing with right for public performance and profit of copyrighted music in the State of Florida, either throught the Society or any other combination which constitutes a substantial number of the persons, firms or corporations within [fols. 303-305] the United States owning or controlling copyrighted musical compositions, when the prices or license fees are fixed and determined by such combination; and
- (b) The collection of license fees or the enforcement or attempted enforcement within this state of contracts, agreements or licenses made by the Society with any person, firm or corporation within this state where the prices or license fees were fixed and determined by the Society for the combined public performance rights within the State of Florida in copyrighted music owned or controlled by any of its individual members or affiliated organizations;
- (c) In the alternative, from selling, licensing or in any manner disposing of in the State of Florida, the performing

rights in or to any musical composition or dramaticomusical composition copyrighted under the laws of the United States, or collecting any compensation on account of any such sale, license or other disposition, without complying with the requirements of Chapter 19653, Laws of Florida, 1939.

(3) Such other and further relief as may be just and proper.

(S.) George Couper Gibbs, Attorney General, (S.) Tyrus A. Norwood, Assistant Attorney General, (S.) Lucien H. Boggs, Jacksonville, Florida, (S.) Andrew W. Bennett, Washington, D. C., Attorneys for the Defendants.

[fol. 306] IN UNITED STATES DISTRICT COURT

Notice of Trial and Final Hearing—Filed March 15, 1940

To: Hon. George Couper Gibbs, Attorney General of the State of Florida; Hon. Thomas J. Ellis, Assistant Attorney General; Lucien H. Boggs, Esq., and Andrew W. Bennett, Esq., Attorneys for the defendants:

You, and each of you, are hereby notified that the Court has set the above styled cause for trial and final hearing before Hon. Joseph C. Hutcheson, Jr., Circuit Judge, Hon. Augustine V. Long and Hon. Louie W. Strum, District Judges, on Monday, April 15, 1940, at 10:00 o'clock, A. M., in the Court Room of this Court at Gainesville, Florida, and at that time and place, evidence will be taken, and the undersigned attorneys for the plaintiffs will move the Court for the entry of a final decree, granting to the plaintiffs the relief sought by them in this cause.

(S.) Frank J. Wideman, Manley P. Caldwell, Attorneys for Plaintiffs.

[fol. 307] STATE OF FLORIDA, County of Palm Beach, ss:

This day personally appeared before me, a Notary Public duly authorized to administer oath, Manley P. Caldwell, who being first duly sworn, deposes and says that he is one of the attorneys for the plaintiffs in the above styled cause; that on March 14th, 1940, he served true copies of the above and foregoing notice upon the attorneys for the

defendants herein, by depositing such true copies in the United States mail, in envelopes securely sealed, and with sufficient postage thereunto attached, addressed respectively as follows:

Hon. George Couper Gibbs, Attorney General of the State of Florida, Tallahassee, Florida; Hon. Thomas J. Ellis, Assistant Attorney General, Tallahassee, Florida; Lucien H. Boggs, Esq., 924 Investment Building, Washington, D. C.; Andrew W. Bennett, Esq., Attorney at Law, Washington, D. C.

(S.) Manley P. Caldwell.

Subscribed and sworn to before me this 14th day of March, A. D. 1940. Ruth E. Akerley, Notary Public, State of Florida at Large. My commission expires June 30, 1943. (Seal.)

[fol. 308] IN UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF FLORIDA, GAINESVILLE DIVISION

GENE BUCK, individually and as President of the American Society of Composers, Authors and Publishers, et al., Complainants,

against

George Couper Gibbs, individually and as Attorney General of the State of Florida, et al., Defendants

Depositions of Witnesses

taken pursuant to notices dated respectively January 6, 1940, and January 15, 1940, and all subsequent stipulations thereto, at the Offices of Messrs. Schwartz & Frohlich, No. 1450 Broadway, Borough of Manhattan, City of New York, N. Y., commencing on February 6, 1940, at 10:30 o'clock a. m., and ending on February 9, 1940.

[fol. 309] Appearances:

For the Con plainants: Messrs. Schwartz & Frohlich, by Louis D. Frohlich, Esq., Herman Finkelstein, Esq., and Frank J. Wideman, Esq., of Counsel. For the Defendants: Lucien H. Boggs, Esq., Special Assistant Attorne, General of the State of Florida, and Andrew W. Bennett, Esq., of Counsel.

It is stipulated that the witnesses whose depositions will be taken herein be not required to return to sign under bath affirming the truth or falsity of the statements con-

tained in said depositions.

It is stipulated that the following objection, with respect to all questions propounded by plaintiffs' counsel dealing with the requirements of sections 2A and 2B of the Florida statute of 1937, be deemed made by the defendants and noted to like extent as though reiterated to each such question, viz: That the question is immaterial and irrelevant, in that it deals with the contents of sections 2A and 2B of [fol. 310] the Florida statute of 1937, which sections have been repealed by Act of the Florida Legislature in 1939, and which sections the Attorney General of Florida as disclaimed any intention to enforce.

It is stipulated that the depositions may be filed with the Clerk of the Court on or before February 26, 1940.

Mr. Boggs: The defendants request that the witnesses

should be put under the rule.

Mr. Frohlich: I do not think it makes much difference. I think I will let the witnesses stay in the room next to the office.

Invine Cassar, called as a witness in behalf of the plaintiffs, having been first duly sworn, did depose and say:

Direct examination.

By Mr. Frohlich:

Q. What is your full name and address?

A. Irving Caesar, and I live at the Park Central Hotel, [fol. 311] 56th Street and Seventh Avenue.

Q. What City?

A. New York City.

Q. What is your occupation?

A. I am an author, composer and publisher.

Q. How long have you been engaged in those occupa-

A. I have been an author and composer for about twentythree to twenty-four years and I have been a publisher for about seven years. Q. Do you write the music or the words?

A. Mostly the words, but sometimes I write music too.

Q. Now, I show you a list of compositions and ask you whether this accurately represents a list of the compositions that you have written or composed over the years.

A. I am acquainted with this list; yes. There may be

some omissions.

Q. But it is substantially correct?
A. Yes, it is substantially correct.

Mr. Frohlich: I offer it in evidence.

Mr. Boggs: No objection.

(List of compositions received in evidence and marked Plaintiffs' Exhibit 1, of this date.)

[fol. 312] Q. Now, you have had your compositions published by various publishers from time to time, haven't you?

A. Yes.

Q. Are you a member of the American Society of Composers, Authors and Publishers?

A. I am.

Q. How long have you been a member of that organiza-

A. About twenty years, twenty or twenty-one years; I

think I joined in 1920; I am not sure.

Q. Now, when did you make your last contract with the American Society of Composers, Austhors and Publishers?

A. I signed a new contract a few months ago; four months ago.

Q. Before the contract

A. Before the contract that expired, yes. The 18th of July, 1935.

Q. And I show you this paper and ask you whether you recognize the signatures.

A. Yes, sir.

Q. Whose signatures are they?

A. Mine and Joe Young's.

Q. He is now the head?

[fol. 313] A. Yes, he is now the head.

Mr. Frohlich: I offer this in evidence.

Mr. Boggs: No objection.

(Contract received in evidence and marked Plaintiffs' Exhibit 2 of this date.)

It is Stipulated that a photostatic copy may be substituted in place of the original, marking same in place of the original.

(Photostatic copy of contract marked Plaintiffs' Exhibit 2.)

Q. Does this Plaintiffs' Exhibit No. 2, Mr. Caesar, represent one of a series of contracts that you had executed with the American Society of Composers, Authors and Publishers since your first membership?

A. Yes.

Q. Now, prior to the time you joined the Society had you ever received any money for the public performance for profit of any of your compositions?

Mr. Boggs: The question is objected to on the ground that it is irrelevant and immaterial.

Q. You may answer.

A. No, sir.

Mr. Frohlich: These rulings are all reserved for the trial. [fol. 314] Mr. Boggs: Yes, sir.

Q. After you joined this Society did you receive any money for the public performance for profit of any of your compositions?

Mr. Boggs: The same objection. Mr. Frohlich: You may answer.

A. Yes, I did.

Q. Can you recall when you received for the first time any money for the public performance for profit of any of your compositions?

A. Well, I think I was in the Society for a year or two before we had a free distribution; I am not sure. That is going back twenty years. I could look it up in my books; it is a matter of record.

Q. And ever since you received the first money for the public performance for profit for your compositions, have you been in receipt from the Society of further moneys from that same source?

A. I have.

Q. And have those moneys come to you in periodic payments?

A. Uninterruptedly, in quarterly payments for the last fourteen years; I am not sure.

Q. And they have come through the American Society of

[fol. 315] Authors, Composers and Publishers?

A. Yes.

Q. Will you please look at this list of compositions. Plaintiffs' Exhibit No. 1, and tell us whether any of those

compositions attained any popularity?

A. Yes, "Animal Crackers in My Soup," that was in Shirley Temple's picture,—I haven't seen this list—"Donna Clara", with Jolson; "Crazy Rhythm"; that was in a show of mine; "Dust Off the Old Piano"; it is a popular song; "Elizabeth"; that was in the Jolson show; "I Want To Be Happy"; "No, No, Nanette", was the name of the show; "If I Forget You"; "Sometimes I am Happy"; "Just a Gigolo"; "Lady, Play Your Mandolin"; "My Blackbirds are Bluebirds Now". Listen—I can keep you going for a long time.

Q. I just want the more popular pieces?

A. "Tea for Two"; "Is It True What They Say About Dixie"; "Suwanee"; "My Song Book,- "Sing A Song Of Safety"—some twelve million children are singing them. Then to go from the sublime to the ridiculous: "South American Joe"; and "Sixty Seconds Every Minute".

Q. Is "Suwanee" on that list?

A. Yes, "Suwanee" is here.
Q. Is that a popular piece?

[fol. 316] A. It was my first hit. George Gershwin and I wrote this hit. "That's What I Want for Christmas," Shirley Temple's Christmas song. "Saskatchewan."

Well, various songs from the "White Horse Inn," a show

that I did.

Q. That will be about enough, Mr. Caesar. Can you tell us which of the compositions that you have just mentioned as being popular compositions sold as many as a million

copies of sheet music?

A. Well, offhand I would say songs like "Suwanee," "Tea for Two," "I want to be Happy," have sold immense copies. I couldn't tell you without looking at my records. I know "Suwanee" alone sold a million of just phonograph records; that's when the record business was very high. It ran, I think, into several million.

Q. Well, can you give us an approximate figure as to

whether any of them sold over 500,0001/

A. Well, "Tea for Two"; "Suwanee"; "I Want to be

Happy"; "Just a Gigolo."

Q. Did any songs written or composed by you within the past ten years sell as much as 500,000 copies of sheet music

A. No, unfortunately; the hit I had, "Is It True What They Say About Dixie," I was the publisher as well, that [fol. 317] sold about 200,000 copies; that was a very big hit.

Q. Do you know generally what goes on in the publishing

business 1

A. I consider that I do, yes.

Q. Have you had experience publishing compositions other than those of your own?

A. Yes, yes.

Q. Well, now, do you know of your own knowledge whether any popular compositions within the last ten years have sold as many as a million copies?

A. I would be almost sure that no popular composition did. For that matter, no composition has sold a million

copies in the last ten years.

Q. Prior to 1923, is it the fact that popular compositions

sold around a million and more copies?

A. Well, there were songs that sold four and five million copies; there were songs that sold way over a million copies. That song published by the Berlin firm; it was written by Irving Berlin, "Tuck Me to Sleep in My Old Kentucky Home," I think sold seven million. There was "The Vamp"; "Peggy O'Neill." But there were many songs that sold 'way over a million.

Q. Has there been a change in the amount of copies of popular songs that have been sold prior to 1923 and subse-

[fol. 318] quent to 1923?

A. Yes.

Q. What has that change been?

A. Well, definitely downward trend for the last ten years. I would say that sheet music, the sale of a song, has been cut about, oh, 50 to 75 per cent, I would say.

Q. What was the life of a popular song prior to 1923, on

the average!

A. Anywhere from six months to a year; perhaps fifteen months.

Q. What is the life of a popular song today?

A. Four to five weeks; six weeks.

Q. To what do you attribute that change, in the period of life of a popular song and also in the amount of copies sold! Mr. Boggs: That is objected to as calling for a conclusion, and on the further ground that the witness has not been qualified to answer such a question.

Mr. Frohlich: He is an expert.

The Witness: Do you want me to answer?

Mr. Frohlich: Yes, you can answer. The Court will rule at the time of the trial.

A. Well, it is obvious that it is due to the fact that there are some 75,000,000, I think, or 60,000,000 radios in use in the [fol. 319] country, some such fantastic figure; and it is an old geometric principle that an object cannot occupy two spots at the same time. Therefore, you can't be sitting at the piano and at the radio both at the same time, unless we develop an ambidextrous race. And so pianos, as is evident from the piano business, painful to look into, or the sheet music business. The piano business for the last 15 years has been bad; it is having a little renaissance now, they have these new models. There is no sense in buying sheet music; they don't have to, when all they have to do is turn on the radio. You can learn it at the end of an evening, it is drummed into your head so often. There is really no necessity for buying sheet music.

Then the life of a song is killed because it is overexploited, for one thing; or, in case it isn't overexploited, it is due to new material coming along to distract you: you don't get a chance to become acquainted with the old song, assuming that you like the old song. And so you're between the devil and the blue sea. If you don't like it, it is drummed into your ears; if you do like it, they don't give you a chance to get any pleasure out of it because they come along with something else. The furnace consumes it all. That [fol. 320] is about the only way that I can explain it.

Q. Now, going back once more to compositions written and composed by you over the years, have you renewed any of those compositions?

A. My copyright?

Q. Copy right, yes.

A. I am not that old, no.

Q. Do you propose to renew copyrights as they expire?

A. What is that?

Q. Do you expect to make arrangements with publishers for the publication of your renewal copyrights from time to time, as your renewals come along?

A. I would like to answer that this way: I really consider this very important; I really consider that my life work, my investments, my savings, are represented in those future copyrights, those future songs of mine that have become valuable, that have proved their value, and that is my nest egg. For instance, I would not sell the copyright for "Tea for Two" to the present publisher for at less than ten to twenty thousand dollars,—I have not made up my mind, but I know it is worth a foftune to him. Because "Tea for Two," though written in 1924, has as many performances today as it had last year or ten years ago; therefore it is a [fol. 321] standard now, it is becoming an important copyright. That is one of the things that I have built for in my lifetime.

It is like a man buying a piece of land and tilling it properly, until it really becomes suitable to bear fruit. Just so, a copyright renewal proposition is very important to me.

Q. Do you expect to receive royalties, either by way of advance royalties, or some other arrangement, on your compositions when you renew them?

A. Yes, of course.

Q. And do you expect that such royalties will be substantial?

A. I hope so, sure.

Q. Well, now, what do you expect to receive by way of royalties from the renewals of your copyrights, as an aggregate gross amount?

A. By way of royalties from sheet music, or do you mean

my net income from these things, or what?

Q. I mean the revenue that you expect to receive from the publishers who will publish your renewal copyrights, from the sale of sheet music and records.

A. Applying myself to sheet music and records, from the sale of my renewed copyrights, well, we will take "Tea for [fol. 322] Two,"—I will take the important ones—

Q. No, take them all. I want you to take them all and tell us what you expect to receive as an aggregate total for the renewal of all of your copyrights, if you live long enough.

Mr. Boggs: The question is objected to as calling for a mere conjectural or speculative answer on the part of the witness.

The Witness: Can I answer it now? Mr. Frohlich: You may answer it.

A. Well, I would say with an average break in luck, I mean with an average, with the normal longevity given to me, songs which at the moment seem to show vitality and seem to be living, I would say that I expect for the rest of my life from sheet music, from royalties on sheet music and mechanicals, from all of my combined pieces, to average about \$7,500 to \$10,000 a year. That has nothing to do with my ASCAP, you know.

Q. I haven't asked you about ASCAP. Take a composition like "Suwanee": when the renewal period comes along do you intend to apply for renewal of the copyright of that

song?

A. Yes, sir; I intend to apply for a renewal of the copyright of that number. As a matter of fact, I just instituted [fol. 323] a system in the songwriters' group, where we have advised songwriters a year before their copyrights run out that their song will come up for renewal. We offer them that protection; we do all the mechanics for them if they want us to.

Q. Now, what advance royalty do you intend to charge

the publisher for the publication of "Suwanee"?

Mr. Boggs: The question is objected to as calling for a mere speculation on the part of the witness.

Mr. Frohlich: You may answer.

A. Well, the point is this: A song like "Suwanee" we call a great catalogue song, a standard song; as a matter of fact, it is going to be revived, I think, in a few months by the publisher. I would want at least for the renewal rights—in other words, in order for the publisher to continue publishing it after my renewal assignment ends—I would want on "Suwanee" not less than \$2500.

Q. What would you want for the renewal rights on the

song "Tea for Two"?

Mr. Boggs: I make the same objection.

A. \$5,000.

Q. What would you ask for the renewal rights for "Chinatown, My Chinatown'?" [fol. 324] A. It is not my song. That is Gene Schwartz's song. I think it has been renewed, hasn't it?

Mr. Frohlich: I will withdraw that; I thought that was your song.

Q. What are you going to ask for "I Want to be Happy"!

A. About \$5,000.

Q. What are you going to ask for "Just a Gigolo"?

A. "Just a Gigolo," well, I think "Just a Gigolo" will be out of fashion by that time. Maybe \$1500 or \$2,000.

Q. What are you going to ask for the renewal rights on "Crazy Rhythm"?

A. About \$2500.

Q. What are you going to ask for the renewal rights on "Lady, Play your Mandolin"?

A. \$1500.

Q. What are you going to ask for the renewal rights on "Is It True What They Say About Dixie"?

A. \$5,000.

Q. What are you going to ask for the renewal rights on

"That is What I want for Christmas"?

A. \$5000. Some of those songs that you mention I own and I am the publisher; so I won't say \$5,000. I will ask \$5,000 if a good publisher comes to me and says, "Will you [fol. 325] turn this copyright renewal over to me?" In the case of "That is What I Want for Christmas" and "Is It True What They Say About Dixie," I own them and published them.

Q. You are generally familiar with the customs in the music business?

A. I am.

3

Q. Do you know whether the publishers today give advance royalties to writers when they make arrangements to publish renewal copyrights?

A. And how. They give substantially.

Q. What in figures do they give on the average popular song?

A. You mean that is renewed, like "Chinatown, My

Chinatown"?

Q. I mean renewals.

A. Well, that would be a conjecture on my part because the boys haven't told me. But I know they have received as high as \$3,000 and \$5,000, and in many cases they make this arrangement—You take Gene Schwartz, who owns "Chinatown, My Chinatown," I believe he could answer that better than I could, I believe he got a contract for a year and a drawing account, a regular drawing account of so much a week—\$100 a week or something of that kind—and it was [fol. 326] all part of one deal. In return for that he gave

the publisher the renewal on "Chinatown, My Chinatown," and he was signed up for two or three years, and he had an assured income. You see, these copyrights—well, you know, renewal rights are very valuable if you have a song of any value. Naturally, millions of songs are written.

Q. Now, on the songs that you have had published by other publishers that is, publishers other than your own firm, did they pay you any money at any time for the public

performance for profit of your compositions?

A. No.

Q. Where did you receive money from that source?

A. From the American Society of Composers, Authors and Publishers.

Q. Did the publishers with whom you contracted for the publication of your compositions pay you anything for the mechanical rendition of your songs on records and music rolls?

A. Yes.

Q. And what has that royalty been?

A. Well, that royalty is usual; in my case it is 50 per cent of the fee per record received by the publisher; in other words, they never receive more than two cents a side, but sometimes they receive only 1½ cents a side on the cheaper [fol. 327] records. They should not do that, because we are entitled to two cents, and so is the publisher entitled to two cents. I don't say that the publisher won't take advantage, but I haven't always proved myself to be the best business man. So I receive fifty per cent, and of course that is shared with my collaborator.

Q. Is that 50 per cent the usual and customary remuneration given by publishers to writers for mechanical repro-

duction?

A. Yes. I would say it was; and from now on it will be; because I am the President of SPA, the songwriters of America, and I just put through this standard contract,

which calls for 50 per cent right down the line.

Q. If you were not in combination with any other member of ASCAP—if you were acting alone—could you determine and fix a price to be charged for the use or rendition of your musical compositions, your copyrighted musical compositions, sold in the State of Florida, to all uses and purposes?

A. No, I could not.

Q. Could you determine and fix the price to be charged for the public performance for profit of any of your compositions within the State of Florida?

Mr. Boggs: I object to that as calling for a mere conclu-[fol. 328] sion on the part of the witness, and a speculative answer is called for by the question.

Mr. Frohlich: You may answer.

A. No, I could not.

Q. Now, if you were to fix and determine a price to be charged for the public performance for profit of any of your compositions in the State of Florida, would you have to take into consideration the various elements that were germane to that problem?

Mr. Boggs: That question is objected to on the same ground, and on the further ground that it is leading.

The Witness: Well, can I answer it now?

Mr. Frohlich: Yes.

A. In order to determine a price for public performance for profit, I would have to become a one-man Gallup survey. I would have to find out for what purpose it was going to be used, whether it was going to be used in a hotel or a cabaret; in other words, I would have to become a one-man survey. It would be almost impossible.

Q. Would you take into consideration the size establish-

ment which was playing your music?

A. I would make a thorough survey of the establishment, the nature of the entertainment, whether they had high-[fol. 329] priced artists or medium-priced artists or low-priced artists, whether they had a named band or nameless band. In other words, we would have to make arrangements for a trip to Florida to find out how important my particular selections were to the operation.

Q. Now, assuming that there are about 367 places of entertainment in the State of Florida, in which copyrighted musical compositions were used, how would you go about determining and fixing a price for those establishments for the public performance for profit of your music, you acting

alone?

Mr. Boggs: The question is objected to on the ground that it is immaterial and irrelevant and calls for a mere speculation on the part of the witness.

Q. You may answer.

A. Well, I would have to,—in the first place I would have to visit them; in the second place I would have to hire somebody to see that they would pay, assuming that I made a deal, I would have to have somebody run around there before they closed the establishment,—those Florida places open and close pretty fast.

Q. Now, are you financially able to employ an investi-

gator?

A. No.

[fol. 330] Q. To investigate in the State of Florida and ascertain the nature of the establishments where your music is being used?

A. No.

Mr. Boggs: The question is objected to as immaterial and irrelevant, there being no prohibition in the Florida statute against the employment of assistants to gauge the value of public performance for profit rights.

Q. Are you financially able to employ attorneys in the State of Florida to protect you against infringements of your compositions in that State?

Mr. Boggs: I make the same objection.

A. Well, it would be to the businessman quite an uneco-

nomic procedure; it would not justify itself.

Q. Now, take those 367 establishments: how many men do you think you would require to go down there to Florida to investigate the nature of those performances, for the purpose of fixing a price for the public performance for profit of your compositions?

Mr. Boggs: The question is objected to as calling for a mere speculation and because no proper foundation has been laid to qualify the witness to establish such figures.

[fol. 331] The Witness: Can I answer that?

Mr. Frohlich: Yes.

A. That depends on how much time I would have. If a man were to continue for a year, I suppose one man could judge one place a day, so we could do it in about a year's time. He could come back and tell me what the survey revealed. If I had to do it in a month's time, I would have to have twelve men; I had to do it in two months' time, perhaps six men could cover it.

Q. How much would you have to pay those men?

A. I would have to give them \$40 to \$50 a week, and automobiles, gasoline, and so forth; I don't know.

Q. And you would have to pay their hotel bills too?

A. Well, naturally.

Q. And would those men have to be skilled?

A. They would have to be showmen: they would have to

know something about show business.

Q. How much would you have to pay a lawyer to look after your interests down in that State to protect you against infringements?

Mr. Boggs: The question is objected to on the ground that it is incompetent, immaterial and irrelevant, and because the witness has not been qualified to answer the same.

[fol. 332] A. Well, I don't know what lawyers get in Florida, but I suppose I would have to pay \$1200 to \$1500 a year to look after my business, my legal business.

Q. Suppose you could fix and determine the price to be charged and you had all the available information, would you be able to do that with reference to all uses and purposes on your compositions?

A. No. sir: I could not.

Q. Will you explain why you could not do that.

A. Well, for instance, let's say that there is a dance time at the Roney-Plaza, and they have developed a wonderful dance to the swing of "Tea for Two,"-now, they probably spent a year in developing that dance and they have played all over the country, and finally they get this Florida opportunity at the Roney-Plaza. Still I might say, "If that dance time is valuable to the Roney-Plaza, then the song "Tea for Two," being such an integral part of their entertainment, it is also valuable to the Roney-Plaza, and therefore I want for that week for the use of "Tea for Two" \$50.

Q. Is there a difference in the value of your compositions from time to time, depending upon the nature of the use?

A. Well, definitely. [fol. 333] Q. Does the value fluctuate constantly among all of your compositions?

A. Among all of my compositions, certainly. Q. Now, could you determine at the present time, and have you any information or any data that would help you to determine what you could charge or what price you could fix upon your compositions for use in television in the State of Florida?

A. For television?

Q. Television.

A. No. I have not; nor has anyone else.

Q. Now, have you any control or are you able to dictate to the manufacturers of mechanical records or music rolls of any of your compositions the amount or price that he is to pay for your compositions for the public performance for profit in the State of Florida?

Mr. Boggs: The question is objected to as not being the best evidence, no proper foundation having been laid for the question.

Mr. Frohlich: You may answer.

A. The question is, have I any rights or privileges in the way of dictating to the manufacturer of a music roll or phonograph record?

Q. That is right.

[fol. 334] A. What price he is to place on his record when it is played for public performance for profit?

Q. Yes, sir; in Florida.

A. In Florida?

Q. Yes.

A. (No answer.)

Mr. Googs: Your question is objected to on the ground that the statute does not require any such action on the part of the witness or of those with whom he deals.

A. I have to have this a little more specific. Are you

referring to coin operated machines?

Q. No, sir. I am referring to any manufacturer of music rolls or records of your compositions. Can you tell him what price to place on his record when he sells that record in the State of Florida?

A. No, of course not, nor anywhere else.

Q. And if he did put any such price on the record, would there be any way in which you could compel him to give you that money for the public performance for profit on that record?

A. No; the present statute is fonfiscatory, as far as I am concerned; it limits him to a maximum royalty to me of

two cents for the record, to be divided between the publisher [fol. 335] and writer.

Q. You just have the royalty on the record?

A. Yes.

Q. There is nothing in your contract, or any contract between your publishers and the manufacturers of rolls or records, which provides for the public performance for profit for those records, is there?

A. No, nothing.

Q. And there never has been?

A. No.

Q. Are you willing to have any manufacturer of music rolls or records act in your interest or behalf in fixing and determining the price to be charged for the public performance for profit of your records in the State of Florida?

Mr. Boggs: The question is objected to, because the willingness or unwillingness of the witness is immaterial and irrelevant.

A. Well, the whole question of manufacturers chiseling in on this public performance for profit is coming to a head. I mean, definitely, I think the copyright owner should have the full right to the administration of his copyright, whether it is music or art, or whatever it is. But there has been some movement afoot lately by some manufacturers [fol. 336] of records and rolls who would like to be able to charge performance fees for their records, and that, of course, I, as President of the SPA, intend to fight tooth and nail, because they have no right in the picture at all.

Q. Now, as a writer or publisher, have you any control over the manufacturer of records and rolls of your com-

positions under the present copyright act?

A. Well, only this right: that I can keep it from being recorded, but once I have permitted it to be recorded by one company, any company, regardless of its credit rating, regardless of its efficiency, regardless of its standing, can come along and reproduce a song on a disc, provided the manufacturer pays me the statutory fee of two cents a record.

Q. Beyond that have you any control?

A. No control.

Q. You have no control in the manufacture of those records and rolls?

A. At this moment, I have no control at all.

Q. How does the Society pay out the money it collects for the public performance for profit on the compositions of its members, do you know?

A. Yes.

[fol. 337] Q. By the way, you are a member of the Board of Directors of that Society?

A. Iam.

Q. How long have you been such a member?

A. Well, it is a matter of record; I guess ten years or so.

Q. And as a member of the Board of Directors are you familiar with the operations of the Society?

A. I would say I am.

Q. And do you attend the meetings regularly

A. Yes.

Q. And you know how it divides up the money that is collected from time to time?

A. Yes.

Q. Now, take the writers, of which you are one: what is the method by which the Society pays out royalties or moneys received from the public performance for profit to those writers?

A. Well, the moneys are first divided fifty-fifty, fifty per

cent to the publisher, and fifty per cent to the writer.

Q. When you say the writer, you mean the writer of lyrics

as well as the composer?

A. Yes, sir; fifty per cent for the composer. The writers include lyric writers, those who write the words and supply [fol. 338] the ideas, and the melody writers, those who supply the music. Now, of the fifty per cent that the writers as a unit receive, one-half is divided—fifty per cent of what the writers of music receive. All writers are classified, whether authors or composers, they are classified in seven important divisions, the top being AA, and then A, BB, B, CC, C, I believe DD, D; and then there are what we call four numerical divisions, going down the scale, class 1, class 2, class 3 and class 4.

Now, the writer's classification depends on, A, the number and quality of his work in the past, B, his current activity, C, his contribution in general to the fund of musical works and music, as represented in the reservoir of the

American Society's repertoire.

That, without going into a lot of detail, is the approximate classification.

Q. What classification have you been in?

A. AA.

Q. How long have you been in that classification?

A. Again, it is a matter of record; I don't know exactly.

Q. Well, give us an approximate period. It does not have to be exact.

A. Let's say seven or eight years.

Q. What have you been drawing on the average from the [fol. 339] Society for the public performance for profit as a member of that classification?

A. Well, I believe the average in the last four years would be a good enough average to take. The last four years?

Q. Yes.

A. I would say it would run to about \$15,000.

Q. \$15,000 a year? A. Per year, yes.

Q. And does that hold good for 1939 too?

A. Yes; I think in 1939, the total for 1939—I just received a statement for income tax purposes—a little over that—because I always receive some funds from England and France, and also for small performing rights.

Q. Do you desire to continue to act in combination with other writers and composers and publishers for the purpose of licensing the performance for profit of your compositions

in the State of Florida?

A. I do.

Q. And does the Society now, and has it since its inception, been licensing those public performance rights for profit upon a system of blanket licenses?

A. Yes.

Q. And is that the manner in which the Society licenses [fol. 340] its users in the State of Florida at the present time?

A. Yes.

Q. Just what do you mean by blanket licenses?

A. Well, blanket license means that a cafe or restaurant or road station for X dollars receives the right to play any of the compositions in the reservoir of material of the American Society of Composers, Authors and Publishers, and that, of course, takes in my own.

Q. Are you willing to affix a price to the compositions that are written and published by you for the State of Florida, which would include a price for public performance

for Public profit?

Mr. Boggs: The question is objected to as irrelevant and immaterial.

Q. Are you willing to affix that price to your sheet music?
A. (No answer.)

Mr. Boggs: The same objection, and on the further ground that the statute makes no such requirement.

A. No. I am not willing to affix a price.

Q. Are you willing to file any list which would make available to the user in Florida your compositions upon fixing a [fol. 341] price for public performance for profit?

Mr. Boggs: The same objection.

Q. Are you willing to do that?

A. No, I am not willing. It is impractical; I mean it is not a question of willingness; it is impractical, it just won't work. It is fantastic. It is not a question of willingness.

Q. Would the filing of any list of prices for the public performance for profit of your compositions in the State of Florida interfere with your exclusive right given to you by the Copyright Act in your compositions?

Mr. Boggs: The question is objected to on the ground that the witness is not competent to answer the same; it calls for a question of law.

Mr. Frohlich: You may answer it.

The Witness: I would like to have the question repeated.

(Pending question read by the reporter.)

A. It would.

Q. In addition to having written and published musical compositions, have you also written and published dramatic music works?

A. Yes, sir.

Q. Just what is a dramatic musical work!

[fol. 342] A. A dramatic musical work is a work that takes its origin from a stage performance; it is words and music that first see the light of day as part of a plot of a play, of a musical play or a revue. It starts out as a stage work.

Q. Can you give us the names of some of the important

stage works you have written?

A. My most important happens to coincide with my most important song. "No, No, Nannette," "Tea for Two," "I

Want to be Happy." Then I had some Greenwich Village Follies; then I had "Nina Rosa," "White Horse Inn" at the Center Theatre, and George White's Scandals.

Q. That will be sufficient. Now, Mr. Caesar, did you at any time publish those compositions to restrict their public performance for profit? I am speaking of those dramatic musical works.

A. Well, I haven't been the publisher of my important

dramatic musical works.

Q. Well, do you know whether the publishers of your dramatic musical works ever restricted any of your dramatic musical works with respect to public performance for

profit, even though they were published?

A. Well, it is part of the contract; it is part of the agreement. I think a dramatic guild manager or owner of a show, [fol. 343] who invests usually anywhere from \$80,000 to \$380,000 in a musical show, wants to control to a certain extent the use of the material of that show, especially where songs are concerned, because he would like it to keep its freshness long enough for him to get his investment back in case the show happens to be a hit. In other words, it would be very easy to take the edge off a show by over-exploiting the music. You can make any show seem as though it was the most common thing in the world in six weeks' time if it is over-exploited.

Q. Is it your testimony that the producer of a stage show must restrict the musical compositions of that show with respect to public performance for profit during the time that

that show is being produced on the stage?

A. Well, I think it is only fair that he should do that. It is only fair that he should have some rights in that connection, because he makes it possible, he makes it possible for those songs to be projected on his stage by his vast investment.

Q. Is that customarily done, to your knowledge of the

business 1

A. Well, yes. I mean, there are restrictions, so that the songs of the show are played in such a way as at least not to be detrimental to the show. In other words, let us assume [fol. 344] that there is a very fine song and a very fine show at the moment, and some little fly-by-night singer decides to take advantage of the song and begins yodeling it over the air and does a very poor job: it would just scare away

maybe ten to twenty thousand people this morning from

wanting to see that show tonight.

You know, I have had that experience with my book "Sing a Song of Safety." I have that request all the time. I have to make a very careful decision as to whom to permit to sing the song, and whom not to permit.

Q. Does the broadcasting of musical compositions that are contained in dramatic musical works interfere with the

presentation of that stage work?

A. Well, a fair answer to that is, judiciously administered it might help; I mean with the bars down it could easily destroy.

Q. By the bars down, do you mean indiscriminate broad-

casting?

A. Promiscuous broadcasting will destroy anything.

- Q. Does that interference between stage and promiscuous broadcasting necessitate restrictions that are frequently placed upon the public performance for profit of your stage works?
 - A. Yes, sir.

[fol. 345] Q. Now, do you desire to have-

· A. In other words, let's say-

Q. Please do not volunteer. Now, do you desire to continue to have the right to restrict your dramatic musical works with respect to public performance for profit in the State of Florida?

A. Yes.

Q. Do your oublishers and do you print up what is known as professional copies of your musical compositions?

A. Unfortunately, I do.

Q. And are these given away gratis to the trade, to the actors, actresses and performers?

A. Yes. Sometimes I think they use it for wallpaper, they take so much.

Q. Is it neces-ary to distribute those professional copies?

A. Yes, it is one of the necessary evils; it is the only way they can be made acquainted with what you've got.

Q. These are published as sheet music of your compositions, aren't they?

A. That's right.

Q. Do you desire to continue to have the right to publish those musical compositions in the form of professional copies and distribute them in the State of Florida?

[fol. 346] A. Yes, surely.

Q. And the right to distribute them in other States as well?

A. Yes.

Q. In other words, when you publish a musical composition in the State of Florida as well as in other States, do you wish to reserve to yourself the right of public performance for profit for a future day?

A. Yes, definitely.

Q. Now, a great many of your compositions published by you over the years have been sold to dealers and jobbers throughout the United States, haven't they?

A. Yes.

Q. And a great many of those compositions are now in the hands of such dealers and jobbers?

A. Yes, sir.

Q. And have you any control over those compositions?

A. No.

Q. Has your publisher any control over those compositions?

A. No.

Q. Are you or your publisher able to compel the jobber to affix on the musical compositions in their possession any price for public performance for profit in the State of [fol. 347] Florida?

Mr. Boggs: The question is objected to on the ground that the section of the statute referred to has been repealed; on the further ground that the State of Florida has disclaimed any effort to enforce the provisions of Section 2A and 2B of the 1937 statute.

Mr. Frohlich: You may answer that.

A. There would be no method by which I could get jobbers or dealers with copies of my music on hand to pay any

attention to price or regulation or limitation.

Q. Now, take the compositions of yours that have been published by various other publishers: would you be willing to permit such publishers to fix and determine the price for the public performance of your copyrighted musical compositions?

Mr. Boggs: I make the same objection. Mr. Frohlich: You may answer. A. I just got through with a three year battle where they would not, without calling in the songwriter to decide what to charge.

(Last question and answer read by reporter.)

Mr. Frohlich: You may cross-examine.

[fol. 348] Cross-examination.

By Mr. Bennett:

Q. Mr. Caesar, I notice on Plaintiffs' Exhibit 1, the list of compositions wherein you have either composed the music or written the lyrics, under the column of Publisher, a great many different music publishing houses under the contract which you have made with those publishers. Who owns the copyright?

A. The publisher.

Q. You have sold the copyright to them?

A. No, it is not a sale. It was not in the form of a sale. It was in the form of a contract whereby I turned the copyright over to them. As a matter of fact, whereby they took the copyright as my manager, having accepted my song. They sent my manuscript to Washington, had it copyrighted in my name; I was given credit. Their rights were as to terms.

Q. What are the usual terms under these contracts?

A. Unfortunately, they vary through the years; it all depended on the strength of the writer, his standing as a writer; his courage when he walked into the publisher, and how anxious he was to have the song published. You have no idea what a songwriter with a song in his pocket will do to get it published—poor fellow, he was afraid; but he [fol. 349] won't be from now on, because my organization advises me that we have the most wonderful centract manageable.

Q. I don't mean the exact number of dollars you receive from that. It is a fact that the compensation you receive from these publishers is a certain number of cents for a sheet of music and a percentage of the royalty on the phono-

graph records?

A. That is right.

Q. And the copyright itself is owned by the publisher?

A. The copyright is owned by the publisher, with the exception that the copyright law, regardless of any contract

you have entered into with the publisher, unless you were an employee of his, returns the copyright to you after 28 years.

Q. I think you testified that you were President of the

Songwriters Protective Association?

A. Yes.

Q. And you stated that the Songwriters Protective Association was advising composers and authors a year in advance of the expiration of their existing copyrights?

A. Yes.

Q. Calling their attention to the date when that renewal should be made?

[fol. 350] A. That's right.

Q. How do you know when the renewal date arrives?

A. The records in Washington, of the copyright office, have that; then the New York Public Library has it too.

Q. How do you know the owner?

A. The composer or author of the number.

Q. Do you maintain records for that?

A. No, we don't maintain records, but the copyright office does. We have to employ somebody who just keeps digging for that all the time, digs it out, goes through the list and sees a familiar name of someone who wrote a song 28 years ago, that would be 1911 or 1912. He says, "Well, I think he is a member of the SPA, so I think I will send him a card telling him his song will come up for renewal a year from today."

Q. All that information is available to you, isn't it?

A. Yes, it is available. You have to burrow for it; it is not hanging on a wall. You have to dig for it.

Q. Do members of the SPA furnish the SPA with lists

of their compositions?

A. Well, they do now, because—not a list of their compositions, but we are trying to get them interested to show us a duplicate copy of their contract.

[fol. 351] Q. Would you say that each one of them has in their possession some kind of information, a list similar to

this exhibit?

A. No. As a matter of fact, I was surprised when this list was compiled. I must get myself a copy of it; I didn't know I had so many works.

Q. Mr. Caesar, in your publishing business, how do you

determine the price of sheet music?

A. Well, there is a standard price for it; I mean, usually you sell it to the jobber, say, for 18 cents; and if you are anxious for him to help you exploit it, he may have you sell it to him for 17 cents; or if you think the piece is going to be a hit regardless of whether he pushes it or not over the music counter, you ask him 20 cents, or you might ask him for 22 cents. It is just a matter of common sense business instinct. There is no way of regulating the thing.

Q. Do you consider the sheet music of every song worth

the same price?

A. Oh, no, no.

Q. Would you consider the sheet music of "Tea for Two" more valuable than sheet music for the "The Umbrella Man"?

A. I am glad you mentioned it. I don't know, as a matter of fact, but I am sure that the wholesale price on "Tea [fol. 352] for Two," the wholesale price must be three or four cents over any current popular song. You see, "Tea for Two," no such song—it embarrasses me mentioning my own song—but no such song, having established itself over the years, it becomes a real piece of merchandise.

Q. You can fix a price, then, on sheet music of what you

are willing to accept for it?

A. It would vary. Let's say "Suwanee"—we mentioned "Suwanee" before, which is a song of mine—I can deal more familiarly with it—now, "Suwanee" probably in sheet music form, I don't know how much has been selling each year; it probably has been selling for 22 or 24 cents wholesale. Now, let's say the publisher decides to reinvigorate it, give it new life, he is liable to put on a special for 30 days or for 60 days at a price of 20 cents, and at the end of 60 days send a postcard out or a blazer and say that this offer is off for such and such a date.

Q. That is a question of the law of supply and demand?

A. That's right; it is a question of pure business.

Q. Purely the business of fixing a price!

A. Supply and demand.

Q. Now, in your publishing business, I am eliminating those compositions which other publishers are publish[fol. 353] ing—

A. You are talking of my own?

Q. Where your own publishing office owns the copyright: are any of those ever incorporated in sound motion picture films?

A. Oh, sure, sure.

Q. Do you sell recording rights to various motion picture companies?

A. You mean the syncrhonization rights?

Q. Yes, the synchronization right.

A. Yes.

Q. How do you determine the price that they pay for that right? Let's take "Suwanee" as an illustration. How

would you determine that price?

A. This is the way. If it is going to be used as background music-in other words, if two people are talking and just in the background you hear strains of "Suwanee" being played, I would consider that relation in my right, And so for that I might ask \$150 or \$200, as background. Now, if it is visual background-not visual background, visual use, visual instrumental use, we'll say that a band is coming down the street playing "Suwanee, How I Love You," then I'd say, well, that band coming down the street playing "Suwanee" is very important, so I might say \$750. [fol. 354] I have had an experience of that kind with "Is It True What They Say About Dixie" a year ago. All that the band did was walk down the street playing "Is It True What They Say About Dixie," so I charged them, when the first application came in, I charged them \$500. Then I learned the day before the picture opened, I learned that they played it four times. That band never stopped coming back but seemed to keep parading all day long in that picture. Everytime they came down the street-well, I could have charged them then, if I wanted to, if I wanted to be unfair, because each use is a separate use, I could have said, "Gentlemen, I didn't know you were going to play it four times, and I want so much more for it, and because evidently this is a very important song to your picture," which they must tell you about in advance. You understand, they must give you some inkling of its use. But I was very lenient with them, and to show that I was not going to hold them up, I just charged them \$1500.

Q. Now, if your price is higher than they wanted to pay, they would not have acquired a recording right from you,

would they?

A. That all depends on what they want to pay; how important it is to them.

Q. That is another question of supply and demand?

[fol. 355] A. Well, no. Let's say "Tea for Two." If it was a picture where a boy and a girl were going to fall in love over a teacup, and that was the genesis of the entire story and of the entire romance, would I be asking too much if I said, "I want \$10,000 or \$15,000 for 'Tea for Two'"?

Q. I don't know. But would they pay it necessarily?

A. Oh, sure, they have paid \$15,000 for one song.

Q. It is a question of the value of that song.

A. Yes, how important it is to them.

Q. Do you make the same charge for the licensing rights on all of your songs?

A. No, I apply the same principle but not the same

charge; I apply the same principle.

Q. Why isn't the charge for one of the poorer songs that you publish the same as the charge you would make for "Tea for Two"?

A. Well, obviously, "Tea for Two" is so important— Let's say that you have cultivated an orange grove on some acreage, you have developed the most wonderful oranges in the world; it just happens that you own the most marvelous oranges, and the seeds of those oranges are invaluable in the State of Florida. On some other acreage that was frostbitten through the years the seeds are not so valuable. [fol. 356] Which seeds are you going to get! And I have applied the same principle with songs; it's only fair.

Q. But you are able to vary your prices and determine

what your compositions are worth to you.

A. Yes, if the factors are known, I can use my judgment, that's all; then it becomes a matter of business judgment.

Q. You put a price on it but it is a question of whether the motion picture producer will pay the price that you are asking?

A. That's right, the same as it would be with anything. Suppose there was a client in Florida that needed a brief written. Now, if he was a man with a little \$4,000 business and you thought that he should be helped, and so forth, you will say "Well, you can have this brief for \$100." But if it were a big public utility corporation in the State of Florida that needed your particular time, you would say \$10,000. That's the same with doctors. Doctors operate for nothing on some fellows, but those who can, pay. I know Bentley Squire charged a friend of mine \$15,000 for one operation.

Q. You said you were a member of the Board of Directors

of ASCAP?

A. Yes, sir.
[fol. 357] Q. Are you a member of the Membership Committee?

A. No, I am not a member of the Membership Committee. The Membership Committee suggests the names that they have passed on, then we ask them questions if there is any doubt in our minds.

Q. Are you a member of the Rate Committee?

A. I am a member of the Administration Committee, which has a broad enough function—if there is any question you want to ask me.

Q. Are you familiar with the manner in which prices

charged by ASCAP are determined by ASCAP?

A. More or less I am, yes.

Q. You sit in on the meetings?
A. Oh, yes, sure, on some of them.

Q. Do you as a member of ASCAP—not as a Director—but as a member of ASCAP, have any control over the price charged by ASCAP for public performance for profit rights?

A. Have I any control?

Q. Yes.

A. Just the control I have over the general policy of the Society.

Q. Who determines the price to be charged for ASCAP!
A. Well, the management in collaboration with field
[fol. 358] workers who do research work.

Mr. Finkelstein: I just want to determine what your question meant. Let's get the meaning of it.

The Witness: There is no such thing as a theoretical rate; it is only a rate in relation to an operation. Do you

understand what I mean?

For instance, the International Casino—we'll take that example—the International Casino was in operation with a \$100,000 or \$200,000 investment, and they had 60 girls in the show, two orchestras, a big bar downstairs and all kinds of ballyhoo. Well, the International Casino, I don't know precisely what their rate was, but it must have been about \$3,500 a year or \$5,000 a year, which I don't think was excessive for that kind of operation. I don't know if you know the place,—It is one of the outstanding places,—and they widely use music. They are powerless without

music. Now, the International Casino has gone broke and it has been turned into a poolroom, a 40 cent poolroom. Well, for a 40 cent poolroom the International Casino does not size up, being a new operation. It is not any different than a saloon down the street, or maybe a dance hall down [fol. 359] on 42nd Street where you have to learn how to dance. So instead of paying \$5,000 I suppose they will have to pay \$2,000.

Q. Take a specific instance in Florida. You mentioned

the Roney-Plaza Hotel.

A. Yes, sir.

Q. Who determines the price to be charged for the Roney-Plaza?

A. The management does.

Q. In so far as the Society has the power to determine the prices?

A. The management does.

Q. You mean the Board of Directors?

A. Not the Board of Directors; it would be impossible for the Board of Directors to go through every individual operation.

Q. When you refer to the management, are you referring

to Mr. Payne or Mr. Meyers?

A. Mr. Payne, Mr. Meyers, Mr. Buck; sometimes I sit in; sometimes our field men who cover that part of the country sit in, or they write in and say what the operation consists of. They might say that the Roney-Plaza just at the moment is having dinner dances or, on the other hand, they might wire us or write us about the Miami-Biltmore, be-[fol. 360] cause they have now gone into extravagant vaude-ville shows as part of their operation.

Q. Are you familiar with the Rate Committee of ASCAP?

A. Yes, for a while I was on the Rate Committee. We went through every ivem when I was on it.

Q. Is it the Rate Committee of ASCAP which fixes the

prices to be charged?

A. Yes, the Rate Committee fixes the prices to be charged. We have 30,000 licensees; well, we cannot go through each so we classify them in groups, whether it is a hotel, whether it is a restaurant; whether it is a hotel that has a four-piece band, which is one group. If it is a restaurant that would not get a corporal's guard unless it had a big stage show, that is another group,—and so forth.

Redirect examination.

By Mr. Frohlich:

Q. Mr. Bennett asked you something about synchronization rights that you occasionally give to motion picture producers when you give those rights. Do you know at that time in how many theatres the picture is going to be performed?

A. No. [fol. 361] Q. Is that information furnished to you by the motion picture producer at that time?

A. No.

Q. Or any other time?

A. No.

Q. Does your synchronization right have anything to diwith the public performance for profit of your composition

A. No.

Q. It is separate and distinct?

A. Yes.

Q. And is limited strictly to putting a musical composition on the disc for sound records of the film itself?

A. That's right.

Q. And the price that you receive for it is limited solel to that right to put it on the sound track?

A. Yes.

Mr. Frohlich: That is all. Mr. Bennett: That is all.

(Witness excused.)

[fol. 362] DEEMS TAYLOR, called as a witness in behalf the Complainants, having been first duly sworn, did depot and say:

Direct examination.

By Mr. Frohlich:

Q. What is your full name and residence, Mr. Taylor!

A. Joseph Deems Taylor.

Q. And you reside where! A. My residence is Haviland Road, Stamford, Connecticut. Q. What is your occupation?

A. Composer of music, writer, and radio speaker.

Q. How long have you composed music?

A. About 35 years.

Q. I show you a list of works which purports to set forth the musical compositions composed by you and ask you if this fairly accurately lists your compositions.

A. I have seen that list. It is reasonably accurate, rea-

sonably complete.

Mr. Frohlich: I offer it in evidence.

Mr. Boggs: No objection.

(List received in evidence and marked Complainants' Exhibit 3 of this date.)

Q. Do you belong to the American Society of Composers, Authors and Publishers? [fol. 363] A. I do.

Q. How long have you been a member of that organiza-

tion?

A. Since 1930.

Q. I show you this document and ask you whether this represents a contract entered into between you and the organization on June 26, 1935. Look at the signatures, please, and see if you recognize those signatures.

A. I recognize my own and that of Joseph Young.

Mr. Frohlich: I offer it in evidence.

Mr. Boggs: No objection.

(Contract received in evidence and marked Complainants' Exhibit 4 of this date.)

Mr. Frohlich: It is stipulated that we can substitute a photostatic copy of the contract in place of the original and mark the photostat in place of the original.

(Photostatic copy marked Complainants' Exhibit 4 of this date, in place of the original.)

Q. Now, prior to the time that you joined the American Society of Composers, Authors and Publishers, had you ever received any money for the public, performance for profit of any of your compositions?

Mr. Boggs: The question is objected to as being imma-[fol. 364] terial and irrelevant.

Mr. Frohlich: You may answer.

13-610-611

19

A. Yes, I had.

Q. Will you please state in what way?

A. As royalties on performances of musical dramatic works and as performance fees for the performance in public of symphonic works.

you ever written any simple musical compositions?

Q. Symphonic works and musical dramatic works. Have

A. Songs?

Q. Songs.

A. Oh, yes.

Q. Did you ever receive any money for the public performance for profit on any of those songs before you became a member of the Society?

A. No.

Mr. Boggs: Same objection.

Q. When for the first time did you receive any money for the public performance for profit on your musical compositions?

A. I don't quite understand the question.

Q. Well, I mean when for the first time did you ever receive money that was paid for the right to publicly perform for profit musical compositions as distinguished from your [fol. 365] dramatic or symphonic works?

A. After I joined the American Society of Composers,

Authors and Publishers.

Q. And have you been receiving moneys from the American Society of Composers, Authors and Publishers ever since?

A. Yes.

Q. Have you been receiving that money in periodic payments?

A. Every quarter.

Q. Can you look over this list of your compositions and mention a few of the outstanding compositions that are contained in it?

A. There is a song called "Captain Stratton;" a fantasy symphonic entitled "Circus Day"; a popular number entitled "The Course of True Love"; a Cantata for Chorus and orchestra, called "The Highwayman"; a pantomime called "A Kiss"; "Anadu"; a song called "May Day Choral"; the suite for orchestra entitled "Through the Looking Glass," and two operas entitled respectively "The King's Henchmen" and "Peter Ibbetson."

Q. Now, you have never written, Mr. Taylor, any socalled popular music, which is written for dance purposes? [fol. 366] A. No, only musical dramatic works, such as musical comedies.

Q. Of course, those songs in musical comedies are, strictly speaking, not popular music, but they are dramatic and musical works?

A. That's right.

Q. Now, you do not sell any large quantities of your sheet music of any of the compositions, do you?

A. No. The sheet sales are infinitesimal, as compared

with those of popular production music.

Q. Now, what is the greatest source of revenue you receive from the writing of your works?

A. My royalties from ASCAP.

Q. How much do those royalties average for the past five or six years from ASCAP?

A. Per year? Q. Per year.

A. For the past five or six years they have averaged in

excess of \$9,000.

Q. So that if it were not for the moneys you receive from the public performance for profit of your compositions your revenue from the sale of sheet music would be very small?

A. It would be cut to approximately one-sixth of what it

is now.

[fol. 367] Q. Now, these compositions that you have written, have any of them been renewed?

A. Yes.

Q. Can you just name those that have been renewed.

A. Yes. "Clothes Make the Soldier Man," which is a production number. "In the Course of True Love." This is apparently the complete score of the comedy called "Echo": "Jolly the Boarder Along"; "Mountain Maiden"; "Poor Old Solomon"; "The Things you Think are not the Things You Say," and to be continued.

Q. Do you propose to renew from time to time your copyrighted works as the original term of the copyright expires?

A. I do, yes.

Q. And when you renew these works, do you make new arrangements with the publishers for the continued publication of the renewed copyright?

A. Oh, yes.

Q. Have you in any instance where you renewed your copyright received any advance royalty from the publishers when you made your arrangement for the publication of the renewals?

A. No.

Q. Have the renewal rights in your composition a value [fol. 368] to you?

A. Yes, they have.

Q. On what do you base the value primarily?
A. On what do I base the value of renewals?

Q. Let me put the question this way: Is the renewal value fixed or determined in your mind by the potential sale of the sheet music, or are there other considerations that give it value?

A. The potential sale of sheet music has some value, but not much. The chief consideration would be the perform-

ance fees.

Q. And isn't it a fact that your compositions are of high standing and prestige in the musical world?

A. Yes.

Q. Are they frequently performed in symphonic halls?

A. They are.

Q. Are they performed on the stage as well?

A. Yes.

Q. And do you have performances of your compositions also on the radio?

A. Yes.

Q. As a matter of fact, you are a commentator on the radio today, aren't you?

A. Yes.

[fol. 369] Q. And have been for some time?

A. Yes, for over ten years.

Q. And in your comments on music do you connect your comments with some of your own compositions?

A. I have on occasions, yes. I try to preserve decent reti-

cence in that regard.

Q. Would you say that your compositions, symphonic, musical and operatic, have something to do with giving you a standing and prestige as a radio commentator?

A. Oh, without a doubt, yes.

Q. Have your musical compositions from time to time been recorded on piano rolls or phonograph records?

A. Nothing of mine has been recorded on piano rolls; I have had some recording on phonograph records, yes.

Q. On the phonograph records do you participate in the royalties that are received by the publisher from the manufacturer of the records?

A. I receive the one cent royalty per side that the Govern-

ment allows.

Q. That is, you receive 50 per cent of what the publisher receives; is that right?

A. I receive 50 per cent of the total statutory royalty, yes.

Q. Is that the usual and customary split on the royalty [fol. 370] between publisher and the writer in the business?

A. I believe it is a statutory split.

Q. Now, have you any control over the manufacture of the phonograph records with respect to fixing a price on that record for the public performance for profit of your compositions in the State of Florida or elsewhere?

Mr. Boggs: I object to that on the ground that it calls for a mere conclusion of law; the witness is not qualified to answer.

Q. You may answer it.

A. May I ask to have that repeated?

Q. (Question read.) A. No. I think not.

Q. Now, if you were not in combination with any other member of ASCAP, if you were acting alone, could you determine and fix the price to be charged for the use and rendition of your musical composition, your copyrighted musical composition, sold in the State of Florida, for all uses and purposes?

Mr. Boggs: The question is objected to as immaterial and irrelevant. The section of the statute to which your reference is made now having been repealed in the State of Florida, and the State disclaims any endeavor to enforce such section.

[fol. 371] The Witness: May I answer it? Mr. Frohlich: Yes, you may answer.

A. I should say offhand that would be utterly impossible.

Q. Now, in order for you to determine and fix a price for the public performance for profit of your compositions in the State of Florida, you would have to take into consideration certain factors with respect to the use of the work in that State; isn't that so?

A. I would, decidedly.

Q. Well, now, can you tell us briefly just what factors you

would have to consider?

A. For example, in the case of the performance of a symphonic work given theoretically for profit, I would take into consideration the size of the hall, the size of the potential audience, also the elaborateness of the performance; if it were given by a small collection of instrumentalists in a hall holding 200 there would be one price; if it were given in a temple holding 4,000 by a 100 piece orchestra, that would be another price; also of vital importance to a composer of serious music is the quality of his performances, much more so than in the case of the composer of popular music, because such performances of serious music are comparatively few in number as compared with those of popular. [fol. 372] music. For example, I hear a new popular song played at noontime on the radio and it is given a very bad performance; that leaves an unfavorable impression, and on that same day I may hear a brilliant performance of it later on, that will correct that earlier impression.

Now, in the case of a symphonic work a bad performance may ruin it in the eyes of the public, because its subsequent performances may be so infrequent that people won't bother

to listen to it.

As I say, it is vitally important that I be able to have some control over the quality of a performance of my music.

Q. Now, Mr. Taylor, in order to do that, would you have to be either personally present in the State of Florida or have a representative in that State?

A. I should have to do one or the other.

Q. And would either you or your representative or agent have to contact various places of public entertainment in that State?

A. Yes, directly or indirectly.

Q. Would you have to have somebody in the State of Florida constantly to see that your work is not infringed and is not performed publicly for profit without your consent?

[fol. 373] A. Performances of music being what they are, I am afraid I would.

Q. Would that necessitate an expenditure of money by

you for that purpose?

A. I would have to employ agents either on salary or commission to make such investigation, yes, or else go myself.

Q. And what would you estimate you would have to pay an agent to represent you in the State of Florida?

Mr. Boggs: The question is objected to on the ground that it is irrelevant and immaterial.

A. I haven't much idea, but I know that, I am sure that the cost of such an investigation, since mine is serious music not so frequently performed, would probably be in excess of any fee I might derive from such performances.

Q. You would have to have a lawyer in the State of Florida to protect you against infringement of your works?

Mr. Boggs: The same objection.

A. Yes.

Q. Are you willing to have your contract with the American Society of Composers, Authors and Publishers cancelled and annulled?

A. Certainly not.

Q. Would you be able at this time to fix a price on your [fol. 374] compositions with respect to the public performance for profit in Florida with respect to all its uses?

Mr. Boggs: The same objection.

A. No.

Q. Would you be able at this time to fix a price or file a list, or make available to the user in Florida of your musical compositions with respect to public performance for profit with respect to television?

A. No, I would not be able to do that.

Q. Have you enough information at this time to help you fix a price for that purpose?

A. I have not.

Q. Do you sometimes restrict the public performance for profit of your compositions?

A. Yes, I do.

Q. Can you tell us when and Lader what circumstances you do that?

A. I do that, in the first place, to avoid having certain works overplayed; it is not good for a piece of serious music. Put it another way: there is a limit to the frequent performance that is good for the piece of serious music; people begin to get tired of it and its life is shortened. Also, as I have said before, the quality of the performance is so [fol. 375] vitally important that with certain orchestral

works I would reserve the right to refuse to have them played by organizations that I do not think are capable of doing them justice.

Q. Is that right of restriction very valuable to you?

A. Surely.

Q. Is it a necessary thing for you in order to preserve the life of your compositions?

A. The life of my compositions and my personal reputa-

tion as a composer.

Q. Now, if a manufacturer of rolls or records in the State of Florida should fix a price for the public performance for profit of one of your compositions, is there any way in which you could compel him to give you a part of the money he receives for that purpose?

A. So far as I know, there is no way.

Q. Are you willing to have a manufacturer of records act as your agent or act in your interest and in your behalf, in fixing and determining the price to be charged for the public performance for profit in your compositions in the State of Florida?

A. No; because I trust my own judgment more than his,

in that respect.

Q. Have you any control whatever over the manufacture [fol. 376] of records of your compositions?

A. The only control allowed me is the right, I suppose, of

allowing them to be recorded at all.

Q. Once that recording is made, have you any further control afterwards in the country over the manufacture and

sale of the records of your compositions?

A. None at all. And that, I might say, is why so comparatively few of my works have been recorded, because rather than risk incompetent performances I have chosen to keep them out of circulation in that particular field of production.

Q. Do you know that the Society licenses compositions by

means of a blanket license?

A. Yes, sir.

Q. And you know that from your association with the Society, don't you?

A. Yes.

Q. Now, are you willing to have your works licensed in the State of Florida on any system other than blanket licenses?

Mr. Boggs: The question is objected to as incompetent and irrelevant.

A. No. I am not.

Q. Well, if you arrived at some system of licensing other [fol. 377] than blanket licensing, would there be additional

expense attached to it, as far as you are concerned?

A. I should think there would be because I would have to deal differently with every individual producer and performer, and I would have to take up every work of mine separately.

Q. And would that mean personal contact with each and

every user of your work in that State?

A. Yes.

Q. That would mean personal association?

A. Yes.

Q. You would have to have somebody do that for you?

A. I could not possibly do it myself and I would have to

assign someone to do it.

Q. Do you desire at the present time to continue to have a right to restrict your musical compositions with respect to public performance for profit?

A. I do.

Mr. Frohlich: Your witness.

Cross-examination.

By Mr. Bennett:

Q. Mr. Taylor, I would like to refer to the list of your compositions marked as Exhibit No. 3. I notice under the [fol. 378] column headed "Publishers," various publishers are mentioned alongside of the individual compositions. Are they, the publishers, the owners of the copyright of that particular composition?

A. In some cases yes, and in some cases no; most of my more ambitious works are copyrighted in my name, although they are issued bearing the publisher's imprint.

Q. I call your attention to Exhibit A, attached to the petition in the Florida suit, which purports to be an agreement between you and J. Fischer & Brother. Is that a representative agreement; does that represent the type of agreement you have entered into with regard to—

A. It represents a large number of agreements that I

have entered into with J. Fischer & Brother.

Q. Would you say that that represents the agreement covering a substantial proportion of the numbers in Complainant's Exhibit No. 3?

A. Roughly, I should say it represents about two-thirds of my agreement with J. Fischer & Brother.

Q. Then as to those two-thirds, the copyright is owned

by J. Fischer & Brother; is that correct?

A. Yes.

Q. In the remaining one-third what type of agreement do you have with the publisher?

[fol. 379] A. It is an agreement giving him the right to publish, and they have the music during the life of the copyright; the work is copyrighted in my name, and the copyright is not part of his assets.

Q. Do those copyrights represent primarily the dramatic

works which you have composed?

A. They represent dramatic, musical and symphonic

works, orchestral works largely.

Q. Now, as to those dramatic and symphonic works, the American Society of Composers, Authors and Publishers does not license the public performance for profit; is that correct?

A. It does not license the public stage performance; it does not license the so-called grand rights; that is, the right to produce the opera with scenery and costumes, no; it controls the small right, that is, the right to perform on the air or otherwise, brief excerpts from those works.

Q. Now, as to the symphonic rights for the syphonies

which you have composed...

A. There again, the Society controls the right to license

broadcast performances.

Q. I thought you testified that you restricted those rights, that you only permitted certain organizations to perform

[fol. 380] your symphonies.

A. That right of restriction, of course, I exercise intermittently; certain works I restrict, not all of them. Some I restrict for a certain length of time, and then raise the restriction. It is a right that the Society allows me to exert, that I am at liberty to exert, and which I do not always exercise.

Q. Do you know whether the Boston Symphony Orchestra has a license from ASCAP, a public performance for

profit license?

A. No, I am sure it has not, because ASCAP so far has not claimed jurisdiction over concert performances. Over symphonic works?

Q. That is what I am getting at, Mr. Taylor.

A. No.

Q. ASCAP then does not license the symphonic works?

A. That license is for broadcast performances.

Q. Suppose the Philharmonic Orchestra is giving a broadcast from NBC or Columbia: does the ASCAP license to NBC and Columbia cover that symphonic broadcast?

A. Yes.

Mr. Finkelstein: You mean from the broadcasting studio?

The Witness: Yes, it has no control over the actual per-[fol. 381] formance in the hall; it controls only the right to broadcast that hall performance over the air.

By Mr. Bennett:

Q. And that only applies to radio broadcasting, not to large orchestras, symphonic orchestras?

A. No.

Q. In auditoriums and halls?

A. No.

Q. Is there anything in your agreement with ASCAP which is designating Complainants' Exhibit No. 4, which makes that differentiation between broadcasting?

Mr. Finkelstein: Are you asking him to interpret the agreement?

Mr. Bennett: No; I am curious. I am not trying to be facetious.

Q. Do you find anything in the agreement there which gives this right to license?

A. You mean if there is any distinction between the two; you mean anything in the agreement that makes a distinction between the two?

Q. Yes, which reserves to you the right to license auditoriums for your symphonies, for ASCAP to license sym-

phonic broadcasts by radio.

A. Section 9. (Reading): "Public performance." De[fol. 382] fining the term "Public Performance." "Public
performance shall be construed to mean vocal, instrumental
and/or mechanical rendition and representation in any
mann. or by any method whatsoever, including transmission by radio broadcasting stations, transmission by telephony and/or 'wired wireless,' and/or reproduction of performances and renditions by means of devices for repro-

ducing sound in synchronism or timed relation with the

taking of motion pictures."

My answer would be then that, strictly speaking, there is no such distinction made in my contract, because the definition mentions certain methods of transmission as being included in the term "public performance," but does not necessarily limit those methods. I mean it does not necessarily limit a public performance to these methods.

Q. Then I take it from your further statement that ASCAP, in your agreement with it, has the right to license

symphonic compositions in auditoriums?

A. Yes, sir.

Q. And all others as well as in radio?

Mr. Finkelstein: His testimony also was that they have not been exercising the right with respect to halls and auditoriums, but that right has been exercised by the members [fol. 383] of the Society. Is that correct?

The Witness: Yes.

By Mr. Bennett:

Q. Did I understand you correctly in your direct testimony to say that you personally licensed symphonic performances in auditoriums?

A. I have done so, yes.

Q. Have you collected fees for that license?

A. Yes.

Q. You have done that in spite of your agreement with ASCAP, transferring your right to them?

A. I have done that with no objection from ASCAP.

Q. How do you arrive at the price you charge for the public performance for profit of a symphonic composition

A. Well, by the size of the auditorium, the importance of the event, the possible profit to the performer, possible gross profit: I should say those are the principal facts and, oh, also in relation to the fees generally paid to other composers of similar music.

Q. Could you not also apply the same methods to determine a price to be charged for the broadcasting of that sym-

phony in a given community?

A. I don't see how I could determine that, promising any [fol. 384] effective and unvarying price, because circumstances change with every performance. For the first performance of a work I might charge a higher or a lower

fee than I would charge later. If the occasion were a very brilliant one and the orchestra conductor, for instance, very famous and extremely competent, and the occasion one that I felt would give my work a brilliant introduction and get a lot of publicity, I might charge a comparatively low fee in relation to what I might charge for an event the following week.

On the other hand, if the performance was given in a hall at increased prices, where I thought that the management stood to make an enormous gross profit, my fee might

be higher than for a subsequent performance.

Q. If you had the right to vary that fee, could you then determine the price, vary it as to different types of per-

formances and vary it as to time?

A. I should say it would be pretty difficult, considering the number of performances, with whom we have to be in contact, and the amount of information that I would have to have to determine beforehand for any length of time.

Q. But you could put a price on it?

A. I could put a price.

Mr. Finkelstein: You mean physically? [fol. 385] The Witness: Certainly, physically, I could put a price on it.

By Mr. Bennett:

Q. Mr. Taylor, are you a member of the Board of Directors of ASCAP?

A: Yes.

Q. How long have you been on the Board?

A. I believe since 1932.

Q. Are you a member of the Membership Committee of ASCAP!

A. Yes.

- Q. How long have you been on the Membership Committee?
- A. I would have to refresh my memory on that; I should say about the same length of time, offhand.

Q. Would you mind stating the requirements for mem-

bership by a composer and author?

A. Well, the primary requirement is that he should have had at least five compositions published by a publisher member of ASCAP; that enables him to file an application for membership.

Q. Were you a member of the Membership Committee in 1934?

A. Yes, I was.

Q. Did you ever hear of Perry Bradford?

A. Yes, I probably did.

[fol. 386] Q. I understand that Perry Bradford wrote quite a number of compositions which have been published, including "Crazy Blues" and "Black Bottom," "All I had to do is Done Gone," and a number of others, and that he was denied membership in ASCAP in about the year 1934.

Mr. Finkelstein: Won't you ask a question instead of testifying. You are telling what your undertanding is, and I object to that.

Q. Were you a member of the Committee when he was denied membership?

A. Yes.

Q. Will you state why he was denied membership.

A. Since I have no very clear recollection of Bradford or his application, I can only give you my—shall I say the reason that must have been responsible for that denial, and that is, in the opinion of the members of that Committee his work, while qualifying in number, did not qualify in quality—that is, in our estimation. They were not of such an order of merit, of possible potential popularity as to be of any considerable value or any value to our clients.

Q. Do you know Ray Walker?

A. Offhand, I do not.

Q. Do you know as a member of the Membership Com-[fol. 387] mittee whether Ray Walker has made application for reinstatement?

A. I don't recall.

Q. For membership in ASCAP!

A. I don't recall.

Q. Do you know whether Ray Walker was a member of ASCAP in 1916 and 1917?

A. That I don't recall, as I do not remember the ASCAP

at that time.

Q. Do you know—Could you ascertain from the records of ASCAP whether Mr. Walker has made application from time to time?

A. Yes, that I could do.

Mr. Frohlich: We will have someone who will be able to testify to that. I will have someone here to tell you all about Ray Walker. He had quite a history.

(Discussion off the record.)

Mr. Bennett: That is all.

Mr. Frohlich: That is all.

(Witness excused.)

(A recess was taken to 2:30 p. m.)

[fol. 388]

After Recess

EDGAR LESLIE, called as a witness in behalf of the Complainants, having been first duly sworn, did depose and say:

Direct examination.

By Mr. Frohlich:

Q. What is your full name and address?

A. Edgar Leslie. I live at 59 West 46th Street, New York City.

Q. What is your occupation?

A. Songwriter.

Q. Do you write the words, the lyrics or the music?

A. Generally the words.

Q. And have you occasionally written music?

A. In remote instances.

Q. For how many years have you been engaged in the profession t

A. 33 or 34 years; from 1906 or 1907.

Q. In those thirty-odd years have you written and published many compositions?

A. Yes.

Q. Do you usually write your compositions in collabora-[fol. 389] tion with a composer who composes the music to your lyrics?

A. Yes.

Q. And after you write a composition and that music is set up by your collaborator, you take this manuscript to a publisher and arrange with him for the publication of the music? A. I submit it to a publisher in the hope that he will like it; then arrange for its publication.

Q. Have you dealt with many publishers through these

years?

A. Yes.

Q. I show you a list of some of your compositions and ask you whether that list truly represents a great many of the compositions that were written by you over the years.

A. I examined this list on one recent occasion, and it is not quite complete, but it represents a great bulk of my com-

positions.

Mr. Frohlich: I offer it in evidence.

Mr. Boggs: No objection.

(List received in evidence and marked Complainants' Exhibit 5 of this date.)

Q. Are you a member of the American Society of Com-[fol. 390] posers, Authors and Publishers?

A. I am.

Q. How long have you been a member?

A. Since its inception in 1914.

Mr. Frohlich: It is stipulated on the record that Mr. Leslie has a contract with the American Society of Composers, Authors and Publishers, dated July, 1935, identical with the contracts in evidence, Complainants' Exhibits 2 and 4.

Q. Now, have you written any hit numbers, Mr. Leslie!

A. As hits are judged, yes.

Q. Now, what would you define, in the language of your

profession, as a hit number?

A song that has caught the fancy of the public in various areas of the country; a song played in sheet music form and record form and played in various places over the road.

Q. Can you give us a number of your compositions that

were published prior to 1923 that were hit songs.

A. Well, I should say the first one was "Tough Guy Levi"; "I Am a Yiddisher Cowboy"; "Good Lucky, Mary"; "You Have to Get Out and Get Under His Automobile"; "Grown Up Ladies Act Like Babies"; "For Me and My Gal"; "Oh, What a Pal was Mary"; "Rolling [fol. 391] Stones"; "Hello, How Are You, How Are You"; "California and You," and some others I possibly have overlooked.

Q. Now, which of those songs that you have mentioned,

Mr. Leslie, sold over a million copies of sheet music!

A. The first one was "Lonesome"; then "You Have to Get Out and Get Under His Automobile"; "California and You"; "The Bells Are Ringing for Me and My Gal"; "Oh, What a Pal was Mary"; this is prior to 1923.

Q. Can you give us some of the hit numbers that you.

wrote, say, since 1923 or '24 or '25, since those years.

A. "Blue"; "By the River St. Marie"; "Dirty Hands, Dirty Face"; -Farmer Gray."

Q. Was "Among My Souvenirs" one of your hits!

A. That came in 1928.

Q. Well, I want the songs you wrote about in 1924, 1925, 1926 and 1927. Please give us now the songs from 1926

down to the present time.

A. "Among My Souvenirs"; "Crazy People"; "In a Little Japanese Tearoom"; "A Little Bit Independent"; "It Looks Like Rain in Cherry Blossom Lane"; "On Treasure Island"; "Moon Over Miami"; "At a Perfume Counter on the Rue de la Paix"; "The Man Was Yellow"; "Me and the Man in the Moon"; "Romance"; "I Wake Up Smiling." [fol. 392] Q. Now, this last mentioned group that you have just given us consists of hit numbers after 1925, 1926, and 1927, in those years and after those years, down to the present time; is that right?

A. Yes, dating from 1921. The last group I mentioned

dates from 1921.

Q. Well, let's get this specific; let us take the year 1928 down to 1940, take that twelve year period: which of the songs come within that period?

A. "Among My Souvenirs," 1928.

Q. And "Romance" comes within that period?

A. Yes.

Q. And "The Man in the Moon" comes within that period?

A. Yes.

Q. "In a Little Japanese Tearoom," that comes within that period?

A. Yes.

Q. "On Treasure Island" comes within that period?

A. Yes

Q. "Moon Over Miami," that comes within it?

A. Yes.

Q. "It Looks Like Rain in Cherry Blossom Lane," that comes within that period?

[fol. 393] A. Yes.

Q. "Robins and Roses"?

A. Yes.

Q. "At a Perfume Counter on the Rue de la Paix" comes within that period?

A. Yes.

Q. Now, did any of those songs, Mr. Leslie, sell as much

as a million copies?

A. The last song in that group that sold a million copies, in excess of a million copies, was "Among My Souvenirs," in 1928 we sold a 1,400,000 or 1,500,000, according to my statement.

Q. Since 1928 have any of your songs hit as high as a million copies?

A. No.

Q. What is the highest that any of them sold, if you know?

A. "On Treasure Island" sold close to 350,000 copies; the next song in the matter of large sales was "In a Little Japanese Tearoom," which sold about 358,000 copies, as I recall it: "It Looks Like Rain in Cherry Blossom Lane" sold about a quarter of a million copies; "Moon Over Miami" sold 225,000 copies—not "Moon over Miami." "A Little Bit Independent" sold 225,000 copies, and "Moon [fol. 394] Over Miami" sold about 200,000 copies. "Robins and Roses" sold about 175,000 copies; and the other songs sold less than 175,000 copies.

Q. Do you know what explanation there is for that difference in the sale of hit songs prior to 1923 and subsequent

to 19231

A. Why, I could speculate on what the difference is.

Q. Well, have you ever analyzed it from your own knowl-

edge, what the difference is due to?

A. Well, people don't seem to have to buy music; they hear too much of it; they are confused, to my way of understanding, day in and day out. By the time that they make up their minds that they like a song and get to buy it in the store, perhaps they hear 50 others that divert their attention from their original aim.

Q. Has radio broadcasting anything to do with that.

A. Oh, I think so, considerably.

Q. What was the life of a hit song prior to 1923?

A. For a period of six months to two years, to two and a half years.

Q. Now what is the life of a hit song in the last ten years?

A. Considerably less; they become less and less.

Q. What is it today?

[fol. 395] A. Oh, I think the song today, judging from what I receive, has a sheet sale perhaps of for two or three months and then collapses.

Q. Does that necessitate the writing of more music by

you writers in order to supply current music!

A. Yes.

Q. You have to write more music; is that right?

A. Yes, sir. There is a demand for more music from the

facilities operating today.

Q. Now, in making your contracts with publishers, as a rule who becomes the owner of the copyright, you or the publisher?

A. I turn the song over to the publisher, he copyrights it,

subject to certain conditions to be fulfilled by him.

Q. Now, among the conditions that are expressed in your contract with publishers, is there a covenant or condition that you receive royalties from the mechanical reproduction of your songs?

A. There is.

Q. And does the publisher license the mechanical companies to make phonograph records and piano rolls?

A. Yes.

Q. And when he receives moneys from these companies [fol. 396] for the reproduction of these compositions, does he settle with you?

A. Yes.

Q. On what basis generally is that settlement made?

A. My contracts call for a 50 per cent.

Q. 50 per cent of what the publisher receives?

A. Yes.

Q. And is that the universal custom throughout the music business, do you know?

A. More or less, generally now.

Q. Now, do you have any contracts with any mechanical reproduction companies at all in your name as the writer of the song?

A. No.

- Q. Have you any control over the manner in which the manufacturer of the piano roll or phonograph record exploits the record?
 - A. No.
 - Q. Does he pay you personally anything!
 - A. No.
- Q. Have you any right with respect to the manner in which that particular record or music roll is sold?

Mr. Boggs: I object to that as it calls for a conclusion of law.

[fol. 397] Mr. Frohlich: You may answer it, Mr. Leslie.

A. No.

Q. Have you any control over what the manufacturer of the roll or record places on the composition by way of statement, credit or otherwise?

A. No.

Q. Is there any way in which you could compell the manufacturer of a music roll or phonograph record to pay you any part of the money that such manufacturer would receive from the performance for profit of the particular record or roll?

Mr. Boggs: Wait a minute; I object to that on the ground that the sections of the statute with which this question is concerned have been repealed and, further, that the State of Florida has disclaimed any intention to enforce it.

Mr. Frohlich: You may answer it.

A. No.

Q. Has there been a change in the amount of money you receive for the mechanical reproduction of your compositions over the years?

A. Considerably.

Q. Now, what did you receive as a rule on a hit song from [fol. 398] the mechanical reproduction of your work prior to 1923?

A. Prior to 1923, in many instances, we received in mechanical revenue an amount equal to the sum we received from the sale of sheet music, sometimes less, but from 66-2/3 per cent to 100 per cent would be the amount received as royalties for the sale of sheet music.

Q. On the sale of sheet music. Was the arrangement you made on a fixed price basis for the sale of sheet music?

A. I can clarify that; for instance, if the agent sold, we will say, a song like "Oh, What a Pal Was Mary," which sold a couple of million copies, and I received a cent and a half royalty on that, with sheet music sales totalling \$30,000, my mechanical revenue, as I can recall it, amounted to from 66-2/3 per cent to 100 per cent of that amount.

Q. In other words, from \$20,000 to \$30,000?

A. Yes.

Q. Do you usually receive one and a half cents a copy for sheet music?

A. Yes; today we do. In the olden days, of course, we did not. When music was sold in the five and ten stores, a lot of copies were sold for 6½ to 10 cents, and less royalty was paid; but the present day mechanical income, as against the amount received for the sale of sheet music, was as I [fol. 399] stated.

Q. What do you receive at the present time from the sale

of a hit song, by way of mechanical reproduction?

A. It has dwindled to almost nothing; I daresay we don't receive in excess of 10 per cent.

Q. That is, 10 per cent of what you receive from the sale

of sheet music?

A. In other words, if a song nets me \$5,000 for the sale of sheet music, I am lucky if I get \$500 for my share of the mechanical revenue.

Q. Have you renewed any of your compositions from time to time as the original term of copyright expired?

A. I have reapplied for copyright and recaptured those

songs myself.

Q. And after you have done that, have you arranged with some publisher for the continued publication of the work?

A. Not as yet.

Q. Have you received any advance royalties from any publishers on any of your renewal copyrights?

A. I have had offers of advances, but I have not accepted

any.

Q. Well, now, can you tell us some of the offers you had with respect to some of the songs, specifying any one spe-

[fol. 400] cific instance?

A. Well, I have a song that is due next year, entitled "You Have to Get Out and Get Under His Automobile." I received an offer from one publisher not later than last week for \$1,000.

Q. As advance royalty!

A. As advance royalty against.

Q. Against?

A. Assigning that song over to him.

Q. On which you would be paid 1½ cents a copy?

A. Yes, that's what I would get: maybe 2 cents.

Q. Have you received any other offers on songs for renewals?

A. I have had no publishers come to me and say that they would like to get together with me in the matter of contracting for renewal rights on some of my songs that have expired.

Q. Now, you have written somewheres between five and

six hundred songs?

A. I have written perhaps a couple of thousand of them; all of them have not been published.

Q. I am speaking of only published songs.

A. That would be a fair estimate; somewhere between 400 and 600 songs; I'd say so. I think I have averaged [fol. 401] fifteen to twenty songs published for the last thirty years.

Q. Now, have these renewal rights that you have a sub-

stantial value in dollars and cents?

Mr. Boggs: I object to that question as incompetent, immaterial and irrelevant, calling for a purely conjectural answer.

Mr. Frohlich: You may answer.

A. I consider them to have.

Q. How much would you say your renewal rights are worth?

Mr. Boggs: Same objection.

A. All of my compositions?

Q. Yes, on all of your compositions. A. When and as they come due?

Q. Yes, sir.

A. I would not take \$100,000 for them.

Q. You believe that they are worth at least \$100,000 to you?

Mr. Boggs: Same objection.

A. They are to me.

Q. Now, did you before you joined the American Society of Composers, Authors and Publishers ever receive from

any source, from anybody at any time, any compensation for the public performance for profit of any of your com[fol. 402] positions?

Mr. Boggs: That is objected to as irrelevant and immaterial.

A. No. sir.

Q. Did you, after you became a member of the American Society of Composers, Authors and Publishers receive any compensation for the public performance for profit on your compositions?

A. Yes.

Q. When for the first time did you receive such compensation?

A. I received dividends the first time in 1921.

- Q. And have you been in receipt of dividends regularly from the Society for those rights since that time?
 - A. Continously to date.
 Q. On a quarterly basis?

A. Yes. sir.

Q. What have you been drawing by way of royalties from the American Society of Composers, Authors and Pub-

lishers in the aggregate?

A. Actually for the past ten years—I don't know for the past ten years—I know for the past five years I received a total sum of \$70,000. I haven't figured the amount I have received previous to that.

[fol. 403] Q. I want to get the average yearly income that

you received from the Society.

A. As best as I can recall—I do know that from 1914 to 1925—Of course, for the first seven years we received no royalties, but until December 31, 1925, inclusive, from 1914 I received a sum total of \$5,000, or an average of about \$400 a year for the first twelve years of my membership. Thereafter the amount of revenue increased; for the next five years I should say it average about \$2,500 a year; and from 1930 to 1935, perhaps \$6,000 or \$7,000 a year; and from 1935 to 1940, the five years inclusive, \$70,000, or \$14,000 a year.

Q. Now, what do you receive today from the sale of your sheet music on all of your compositions, say for the year

1939, what did you receive?

A. I haven't the figures.

Q. Approximately,

A. During the years 1938-1939 I was inactive, due more or less to illness; I don't think I can give you a fair estimate on the songs sold during that time, not having been very active; but during the period of 1935 to 1938, when I wrote, the number of hits reached the pinnacle point, the Number One position on the Lucky Strike Hit Parade, I received one and a half times the total amount of copies on the songs that [fol. 404] I have outlined to you as sheet music royalties; and, oh, perhaps 15 per cent of that amount, 10 to 15 per cent at the outside, as mechanical revenue for recording rights and privileges.

Q. Did you receive as much from the sale of sheet music and mechanical rights together as you received from the Society for your performing rights during these three

yearsf

A. No.
Q. Are you at the present time in receipt of moneys from your sheet music and mechanical rights to any large or substantial extent?

A. No.

Q. Your performing money from the Society is the largest part of your income today?

A. Yes.

Q. And if you were not in receipt of that income, could you continue your profession as a songwriter?

Mr. Boggs: That is objected to as irrelevant and immaterial.

Mr. Frohlich: You may answer.

The Witness: Do you wish me to answer?

Mr. Frohlich: Yes, sir.

A. I don't believe so.

[fol. 405] Q. Did any one of your publishers at any time give to the manufacturers of records or rolls the right to make a charge or demand money for the public performance for profit for your records or rolls?

Mr. Boggs: That is objected to on the ground that the witness has not been shown to be in possession of any knowledge as to what his publishers did with regard to that matter.

Mr. Frohlich: You may answer.

A. No.

- Q. Did you ever give such a right to manufacturers of rolls or records?
 - A. No.
- Q. Would you be willing to have the manufacturer of records or rolls, at any time collect in your interest or behalf any moneys for the purpose of public performance for profit of those records and rolls?
 - A. No.
- Q. Do you give the publisher the right to collect any moneys for you from the public performance for profit of your compositions?
 - A. No.
- Q. Do you desire to continue possession yourself and keep that right of public performance for profit?

 [fol. 406] A. Yes.
- Q. And do you wish to retain for yourself the right to determine and fix the price to be charged for the public performance for profit of your compositions?
 - A. Yes.
- Q. Are you able to fix the price for public performance for profit of any of your compositions in the State of Florida at the present time, acting alone and independent, not in combination with anyone else?
 - A. No.
- Q. In order for you to fix and determine the price for the public performance for profit of your compositions in that State, what would you have to do?
- A. I would have to make a study of the establishments in the State, the number of them, the radio stations, the value of my works to their operation as a whole; I would have to employ someone to gather that information for me and, as a result of the acquisition of that information, I would perhaps get advice as perhaps what to fix as a price for the use of those works.
- Q. Would you have to go down to Florida yourself, or send someone down to investigate each establishment that uses music?
 - A. Yes, sir.

[fol. 407] Q. And that would be an expensive proposition to you?

- A. Yes.
- Q. How many men do you think you would have to employ to go down there to Florida to cover the 376 establishments?

0

Mr. Boggs: The question is objected to as calling for a pure conjectural answer.

Q. You may answer.

A. Well, first I would have to engage a lawyer and get advice from him as to how to meet the requirements of the law and, as a result of that information, I could best determine the amount of help necessary to gain it for me.

Q. Would you have to familiarize yourself with the nature of each establishment in the State of Florida that

uses your nfusic?

A. Yes.

Q. Would you have to contact these establishments?

A. Constantly, for the purpose of seeing that they only used music-

Q. Your music, which they have paid for at the time they purchase the music?

A. Yes.

Q. Would you be in a position to demand from the owner [fol. 408] of these establishments, books, papers, documents or records to show you that your music was being performed there after it had been purchased, and the purchase price paid at the source?

Mr. Boggs: The question is objected to as calling for a pure legal conclusion; it would depend largely on how much the cost of operation in that information would be.

Q. Wouldn't you have to have men down there to investigate each establishment to see that your particular music is not infringed?

A. I would.

Q. And if it were infringed, wouldn't you have to employ somebody down there for the purpose of seeking redress for the infringement?

A. Yes, sir.

Q. And what do you estimate the cost to be of investigators and lawyers down there in the State of Florida to protect your own music?

Mr. Boggs: The question is objected to as incompetent. The witness has not been shown to be in possession of any knowledge which would qualify him to answer same.

A. I think the type of person needed to get that informa-[fol. 409] — for me would be worth at least \$50 to \$75 a week.

Q. Now, as a matter of fact, each establishment in the State of Florida that plays your music plays it in a different way from week to week?

A. Yes.

Q. I mean one week they may have a three-piece and another week a five-piece orchestra; one week they may have an attendance of 100, the next week an attendance of 500; isn't that the fact with regard to all places of public entertainment?

A. Yes.

Q. Are you able at this time to fix and determine a price with respect to each of your compositions that would be fair to you with regard to the public performance for profit of your compositions in the State of Florida?

A. No.

Q. Are you financially able at the present time to retain and employ a representative in the State of Florida to obtain information for you with respect to the nature of the establishments using your music?

Mr. Boggs: I object to that question on the ground that it is irrelevant and immaterial.

A. I don't believe that I am.

Q. Could you at the present time fix a price for your [fol. 410] musical compositions in Florida with respect to television?

A. No.

Q. Have you any information available with respect to television that would help you to fix such a price?

A. No.

Q. Could you today fix a price with respect to all future uses that may be made of your music in the State of Florida?

A. No.

Q. Are you in a position today to know what use television, with respect to your compositions, would be in the State of Florida ten years hence?

A. No.

Q. If you were acting alone, independent of any group or association similar to ASCAP, would you be willing to determine upon the publication of your compositions once and for all the prices for all forms of use for the balance of the copyright period in the State of Florida?

A. No.

Mr. Boggs: I object on the ground that the sections of the statute with which the question is concerned have been repealed and the State of Florida disclaims all intention of enforcing same.

[fol. 411] Q. Do , u desire to retain for yourself, if you are alone and not acting in conjunction with any combination, would you desire to retain for yourself the right to fix the time when you begin to exercise the right of public performance for profit?

A. Yes.

Q. In other words, you might publish a song today and not want to give anyone a license to perform it for public profit until some future time?

A. Yes.

Q. And that is frequently done with respect to musical compositions?

A. Yes.

Q. Has that ever been done with respect to your musical compositions?

A. Oh, yes.

Q. They call that the right of restriction?

A. Yes.

Q. Have any of your compositions played in musical productions, musical dramatic works?

A. Yes.

Q. And have such compositions from time to time been restricted?

A. Yes.

[fol 412] Q. Has that restriction been due to any particular reason?

A. Oftentimes the manager of the show did not want to have a song overdone while the show was in progress. Oftentimes the owner of a motion picture would prefer to have it later with a restricted amount of performances given the composition out of a show for inclusion in that picture.

Q. In other words, the producer of a show or of a picture does not want an inferior competition by somebody else

with respect to his own works, does he?

A. That is the idea.

Q. If the public freely had a right to broadcast or perform in any other way musical compositions that were part of the show or part of the picture, that would be

competition between the public and producer of the show or picture?

A. Yes.

Q. And in order to prevent that competition and save his investment, it is necessary, isn't it, for the producer of a show or a picture to restrict the indiscriminate performances of the particular composition?

A. Yes.

Q. And is that customary and usual in this business?

A. Yes.

[fol. 413] Q. Is it necessary?

A. Yes.

Q. And has that been done with respect to your own compositions from time to time!

A. Yes.

Q. And that is true regardless of the fact that particular compositions are actually published and are on the market?

A. Yes.

Q. Now, have any of your compositions ever been performed over the radio?

A. Yes.

Q. Have you heard them so performed from time to time?

A. Yes.

Q. Well, have you heard your compositions performed over the national hookup of the National Broadcasting Company and the Columbia Broadcasting System?

A. Yes.

Q. Have you heard them particularly performed in that manner?

A. Yes.

Q. Are your compositions being presently performed in the State of Florida?

[fol. 414] A. I don't know.

Q. Well, if the Florida station had any hookup with the National Broadcasting Company or the Columbia Broadcasting System, then your compositions were performed under those two stations and they would be heard in Florida, wouldn't they?

A. Yes.

Q. Now, do you want to retain your contract with the American Society of Composers, Authors and Publishers?

A. Yes.

- Q. You don't want your contract between you annulled and voided, do you?
 - A. No.
 - Q. Is it of value to you?
 - A. Yes.
- Q. And you expect to renew that contract for a further period of time with the American Society of Composers, Authors and Publishers?

A. Yes.

Mr. Boggs: The question is objected to as immaterial and irrelevant and calling for a conjectural answer.

- Q. Are you able to protect your public performance rights for profit without the cooperation and help of the [fol. 415] American Society of Composers, Authors and Publishers?
 - A. No.

Q. Have you personally had any experience in bringing suit for infringements of your musical compositions?

A. I think I have been the plaintiff in some actions brought by the American Society of Composers, Authors and Publishers on my behalf.

Q. No. I mean have you personally brought any such

suit?

A. No.

Q. Would you know how to go about it?

A. Except to consult an attorney.

Q. Would you know how to protect your rights, if it were not for the American Society of Composers, Authors and Publishers?

A. I don't think so.

Q. Have you got the financial means to protect your rights throughout the United States against infringements of your works?

Mr. Boggs: The question is objected to on the ground it is irrelevant and immaterial.

A. No.

Q. Are your works licensed today by the American [fol. 416] Society of Authors, Composers and Publishers under a system of blanket licenses?

A. The American Society of Composers, Authors and Publishers licenses the use of my works to various establishments and users of copyrighted material, subject to

certain conditions and restrictions.

Q. And these licenses by the American Society of Composers, Authors and Publishers are blanket licenses, aren't they?

A. Yes.

Q. Do you want the Society to continue licensing users of your works under a system of blanket licenses?

A. According to the present system of ASCAP, yes.

Q. Have you ever had any controversy with any person, firm or corporation with respect to the authorship or ownership of any of your compositions?

A. No.

Mr. Frohlich: You may cross-examine.

Cross-examination.

By Mr. Bennett:

Q. Mr. Leslie, do you own the copyrights on any compositions written by you except the few renewals you mentioned?

[fol. 417] A. I don't understand your question.

Q. (Question repeated by reporter.)

A. Yes.

Q. When you entered into the contracts with the various publishers noted on this list, Plaintiffs' Exhibit No. 5, had those contracts provided that the publisher acquire the copyright?

A. Excepting in the matter of small rights.

Q. Who entered the copyright in the Copyright Office?

A. The publisher.

Q. In whose name does the copyright stand in the Copyright Office?

A. The publisher's.

Q. Does the publisher own the copyright then subject to your contract with him, whereby he pays you a certain amount of royalty?

A. Except in the instance of the small rights.

Q. What is the provision in your contract with respect to small rights?

A. Well, the publisher, when you bring the publisher a song, he knows that I have possession of the small rights

in ASCAP. He takes the song from me and publishes it subject to the contract that I have with ASCAP, and I receive 50 per cent of the revenue derived for the use of [fol. 418] that small rights to ASCAP.

Q. Does your contract with the publisher provide for

that?

A. I would say it does. Q. In every instance?

A. Yes.

Q. How about contracts you entered into thirty years ago!
A. Thirty years ago, I can't recall them to mind. We were not conscious of the value of the small rights in those days.

Q. Are contracts which you have entered into with the publishers similar to those entered into by Mr. Deems

Taylor!

A. I don't know what Taylor's contracts are. Now, for instance, many of my songs were published by Watterson, Berlin & Snyder and are now published by Jack Mills. I had no written agreement, I entered into a verbal agreement with Mr. Watterson for a period of ten to twelve years.

Q. On what basis did Jack Mills publish them; where

did they acquire the right?

A. He acquired the right, I believe, from the Referee in-Bankruptcy, the Irving Trust Company. [fol. 419] Q. The Referee in Bankruptcy for whom?

A. Watterson, Berlin & Snyder.

Q. Then in order to have acquired that right, Watterson, Berlin & Snyder must have owned the copyright in that, didn't they?

A. They owned the right to publish, to print and to mechanically reproduce those songs, but they did not own the exclusive small performing right to those songs.

Q. Was the copyright in the Copyright Office entered in

the name of Watterson, Berlin & Snyder!

A. I believe so.

Q. Is there anything in the Copyright Office indicating that you owned or controlled the performing rights of any of the numbers which you have composed?

A. I don't know. I know I had an agreement with Wat-

terson.

Q. What was your agreement with Watterson?

A. I owned 50 per cent of the small right, to be administered through the facilities of the American Society of Composers, Authors and Publishers.

Q. Do you have copies of any contracts?

A. Those are all verbal agreements; I had no contract with the publisher on any of those songs.

Q. When did you make this agreement with Watterson,

[fol. 420] Berlin & Snyder†

A. About 1912.

Q. They had those provisions in it?

A. It was a verbal agreement with Watterson, a verbal agreement made in 1912 on the first song; in 1914 I made my agreement with Watterson when he joined up with ASCAP. I was to receive 50 per cent, and I retained a 50 per cent proprietary interest in those songs with respect to the small right.

Q. Yet the Referee in Bankruptcy transferred the copy-

right?

A Subject to the conditions being fulfilled with respect to the small right being administered by ASCAP.

Q. Was there anything said about the provisional trans-

fer by the Referee!

A. I don't know; I was only concerned in the transfer to the extent that I receive royalties from Jack Mills on the same basis that Watterson paid me.

Q. Have you ever tried to protect your performing rights in any compositions in any manner except through ASCAP?

A. No.

Q. Have you ever read over the Florida statute?

A. Well, I have read so many of these State statutes, [fol. 421] I can't catalogue them in my mind to the extent of identifying one from the other, but I have read them all.

Q. Do you know what the Florida statutes require?

Mr. Finkelstein: May he refresh his recollection?

Mr. Bennett: Just a minute. Let the witness testify.

A. No, I just can't bring it to mind, it is so confusing, all those statutes, to my mind.

Q. Then your testimony today has been not based upon

knowledge of what is required in Florida!

A. I read what was required in Florida, but I just don't recall verbatim. I know there were restrictions placed upon me.

Mr. Bennett: That is all.

15-610-611

Redirect examination.

By Mr. Frohlich:

Q. Do you remember, Mr. Leslie, reading Section 1 of the Florida statute, Senate Bill 679, which reads as follows:

"It shall be unlawful for authors, composers, publishers, owners, or their heirs, successors or assigns, of copyrighted vocal or instrumental musical compositions to form any [fol. 422] society, association, partnership, corporation or other group of entity, called herein a combination, when the members therein constitute a substantial number of the persons, firms or corporations within the United States who own or control copyrighted vocal or instrumental musical compositions, and when one of the objects of such combination is the determination and fixation of license fees or other exactions required by such combination for itself of its members or other interested parties for any use or rendition of copyrighted vocal or instrumental musical compositions for private or public performance for profit; and the collection or attempted collection of such license fee or other exaction so fixed and determined by any member, agent, or representative of such combination herein declared unlawful, from any person, firm or corporation within the State. including theatres, radio receiving, radio broadcasting and radio re-broadcasting stations, moving picture houses, hotels, restaurants, clubs, dance halls, recreation rooms, pavilions, colleges, universities, churches, or any one who uses music in the conduct of his business, or the officers, directors, proprietors, managers, owners or representatives thereof, who render or cause to be rendered or permit to be rendered such copyrighted vocal or instrumental musical [fol. 423] compositions privately or publicly for profit through personal performances, or through radio or any instrumentality or sound producing apparatus, shall be and the same hereby are declared unlawful and illegal; and such license fees or other exactions by such combination or its agents, members or interested parties shall not be collected in any court within the boundaries of this State; and such collection or attempted collection of such license fee or other exaction by such combination or its agents, members or interested parties, shall be a separate offense hereunder; and any such combination of authors, composers or publishers, or their heirs, successors or assigns, as herein defined, is hereby declared to be an unlawful monopoly in this State; and the fixing of prices or exactions for use or rendition of copyrighted musical compositions and the collecting or attempting to collect such license fees or other exactions by it or for its members or other interested parties, is hereby declared illegal and in restraint of trade; and such collection or attempted collection is declared to be an intra-state transaction within the State, and shall be subject to the terms and penalties of this Act."

A. I read that.

Q. Do you recall having read that and discussed it with

[fol. 424] me?

A. Either with you or Mr. Finkelstein; yes, I recall having read that and discussed it with Mr. Finkelstein or Mr. Frohlich.

Q. Do you recall having your attention directed to this

particular section 3 of this Florida statute:

"All existing contracts, agreements, or licenses now existing within this State, made by any person, firm or corporation with any combination declared unlawful under Section 1 hereof, are hereby declared void and nonenforcible in any court within the State, and are hereby declared to have been entered into as intra-state transactions with such unlawful combinations and in restraint of trade. And all such contracts, agreements, licenses and the attempted enforcement thereof may be enjoined by any person, firm or corporation sought to be bound thereby; and any agent, member or representative of such unlawful combination enforcing or attempting to enforce the terms of such existing contract, agreement or license, shall be guilty of a violation of the terms of this Act; and for any collection or attempted collection of moneys set out in the illegal contract, agreement or license, shall be subject to the penalties of this Act."

Do you recall that particular paragraph being called to [fol. 425] your attention?

A. I read it.

Q. Do you recall having been advised as to whether or not your contract with the American Society of Composers, Authors and Publishers comes within sections 1 and 3, which I have just called to your attention?

A. Yes.

Q. Are you willing to have your contract with the American Society of Composers, Authors and Publishers declared unlawful and illegal?

A. No.

Q. Do you wish to retain your benefits from that contract!

A. Yes.

Q. Do you recall having had section 4-A called to your attention by Mr. Finkelstein and myself on various occasions?

A. Yes.

Q. Let me read the section to you and see if it refreshes your recollection:

"Section 4-A. Any person, firm or corporation who owns, leases, operates or manages a radio broadcasting, radio receiving or radio re-broadcasting station within this State, shall be and is hereby authorized to receive, broadcast and [fol. 426] re-broadcast copyrighted vocal or instrumental musical compositions, the copyrights of which are owned or controlled by any such combination declared unlawful by Section 1 hereof, without the payment, to such combination or to its agents, representatives or assigns, of any license fee or other exaction declared illegal and non-collectible by the terms hereof."

Do you recall that Section? .

A. Yes.

Q. Are you willing to have your compositions made available free to the users of Florida by this broadcasting without the State of Florida?

A. No.

Q. Are you willing to have your compositions made available free to the users of the State of Florida who operate motion picture theatres in that State?

A. No.

Q. Or hotels, restaurants, cabarets and other places of amusement or entertainment?

A. No.

Q. Do you recall this Section having been called to your attention by Mr. Finkelstein and myself:

"Section 5-B. When such theatre or theatres, moving pic-[fol. 427] ture house or houses, or other places for amusement or performance is or are affiliated or under contract in any manner whatsoever with any other person, firm or corporation furnishing in any form or manner copyrighted musical compositions from outside this State, or supplying such persons, firms or corporation in this State with radio broadcasts, or electrical transcriptions, sound production

instrumentalities or apparatus, or artists, performers, musicians, singers, players, orchestras, bands, or other artists or talent, wherein or whereby copyrighted vocal or instrumental musical compositions are privately or publicly rendered for profit, then such person, firm or corporation out side this State shall be and is hereby prohibited from in any manner charging or attempting to charge, or collecting or attempting to collect, from any such person, firm or corporation who owns, leases, operates or manages such theatre or theatres, moving picture house or houses, or other places for amusement or public performance within this State, any license fee or other exaction for the purpose of paying or repaying the same to any such combination declared unlawful by Section 1 hereof for the use, rendition or performarce of such copyrighted musical compositions: and any [fol. 428] such person, firm or corporation collecting or attempting to collect such license fee or other exaction from outside this State against such persons, firms or corporations within this State for the purpose of paying or reimbursing itself for having paid any such license fee or other exaction herein declared unlawful and non-collectible; shall be deemed guilty of a violation of the provisions of this Act; and such persons, firm or corporation from without this State is hereby declared to be an agent and representative of such combination declared illegal and unlawful by Section 1 hereof, and shall be subject to all the penalties hereof."

Do you recall that section?

A. Yes.

Q. Are you willing to have your compositions performed by performers, singers, players, orchestras, or records or piano rolls, or any other instrumentality, outside of the State of Florida, produced free of charge and performed without payment of any royalty to you in the State of Florida?

A. No.

Q. And do you want to retain your exclusive right of the copyright?

[fol. 429] A. Yes.

Q. Are you willing to have the publisher retain the exclusive publishing right of your compositions?

A. Yes.

Q. And so far as the public performance rights are concerned, you desire to retain those rights that you possess under your present copyright, or under the right you derive under the Copyright Act; is that right?

A. Yes.

Q. Are you willing to have the publisher have the exclusive right of public performance of your compositions?

A. No.

Q. You want those for your self?

A. Yes.

Q. Do you want to be free to protect your copyright of your public right of performance for profit in your musical compositions against infringement in the State of Florida?

A. Yes.

Q. And do you want to retain all rights and all exclusive rights given to you by the Copyright Act with respect to your compositions?

A. Yes.

Q. Are you willing to file any list in the State of Florida of your musical compositions?

[fol. 430] A. No.

Q. Has your attention been directed by Mr. Finkelstein or myself to the following Section of the Florida law, known as House Bill 1103, and Senate Bill 635, effective May 19391

Let me read to you Section 2:

"Section 2. It shall be unlawful for any person to sell, license the use of, or in any manner whatsoever dispose of, in this state, the performing rights in or to any musical composition or dramatico-musical composition which has been copyrighted, and is the subject of a valid existing copyright, under the laws of the United States, or to collect any compensation on account of any such sale, license, or

other disposition, unless such person:

"(a) Shall first have filed with the Comptroller on forms prescribed by the Comptroller a list describing each such musical composition and dramatico-musical composition, the performing rights in which said person intends to sell, license or otherwise dispose of in this state, which description shall include the following: The name and title of the copyrighted composition, the date of the copyright, the number or other identifying symbol given thereto in the United States copyright office, the name of the author, the [fol. 431] name of the publisher, the name of the present owner of the copyright to said composition, and the name of the present owner of the performing rights thereto. Additional lists of such copyrighted compositions may be

filed by any such person from time to time, and shall be subject to all the provisions of this Act. A filing fee of two cents a composition shall be required by the Comptroller

for filing any list under this Act.

"(b) Shall simultaneously file an affidavit which shall describe the performance rights to be sold, licensed or otherwise disposed of and shall state that the compositions so listed are copyrighted under the laws of the United States, that the facts contained in the list to which said affidavit relates are true, that affiant has full authority to sell, license or otherwise dispose of the performing rights in such composition; and the affidavit shall set forth the name, age, occupation and residence of the affiant; and if an agent, the name, occupation and residence of his principal."

A. Yes.

Q. Are you willing to pay a filing fee of two cents a composition to the State of Florida with respect to each composition on such list?

A. No.

Q. Are you able to make an affidavit with respect to the accuracy of the matter contained on any such list?

A. No.

Q. Could you possibly make such an affidavit?

A. It largely depends upon what kind of a search my men would make in the Copyright Office for me.

Q. Are you at this time able to make available to the user of your composition within the State of Florida your public performance right for profit on each and every one of your musical compositions, by filing a list on which you fix and determine the price of such performance right for profit?

A. No.

Q. Are you able from time to time to file a new schedule of prices with any such list?

A. No.

Mr. Frohlich: That is all.

Mr. Bennett: That is all. Just a moment.

By Mr. Bennett:

Q. Are you a member of the Board of Directors of ASCAP?

A. Yes.

Mr. Bennett: That is all.

[fol. 433] FRED E. AHLERT, called as a witness in behalf of the Complainants, having been first duly sworn, did depose and say:

Direct examination.

By Mr. Frohlich:

Q. What is your full name and address?

A. Fred E. Ahlert.

Q. Where do you reside?

- A. 10 West 96th Street, New York City.
- Q. Now, what is your occupation?

A. Composer.

Q. How long have you been a composer?

- A. About 25 or 26 years—just a minute; I want to make sure of that. I see "The Swing" here; that was copyrighted in 1909. A little longer than that.
 - Q. Would you say anywhere from between 25 to 30 years!

A. Yes, I would say that.

Q. Now, have you composed many compositions in that period?

A. Yes, sir.

Q. I show you a list of compositions entitled "List of Compositions written by Fred Ahlert, and ask you whether [fol. 434] you recognize these compositions as having been composed by you.

A. Yes, sir.

Mr. Frohlich: I will offer this in evidence.

Mr. Boggs: No objection.

(List received in evidence and marked Complainants' Exhibit 6, of this date.)

Q. Is this list, Plaintiffs' Exhibit 6, complete, Mr. Ahlert! A. Well, I wouldn't say it was complete; I guess there are quite a few numbers that I probably did not register with the Society. I was very careless sometimes, at various times, in not registering compositions.

Q. Are you a member of the American Society of Composers, Authors and Publishers?

A. Yes.

Q. When did you first join up with that organization? A. 1920.

Q. Have you a contract with that Society dated July 1935, for a five-year period?

A. Yes.

Mr. Frohlich: It is stipulated that the witness has a contract with the American Society of Authors, Composers and Publishers identical with the contract in evidence as [fol. 435] Plaintiffs' Exhibits 2 and 4.

Q. Now, what year did you say you joined up with this Society?

A. 1920.

Q. Had you ever received any compensation for your right of public performance for profit for your compositions prior to the time you joined up with the Society?

A. No. sir.

Q. Did you receive any compensation for the public performance for profit of your compositions after you joined up with the Society?

A. Not right away, but after 1921 I did.

Q. And have you been continuously in receipt of royalties from those performing rights from the Society?

A. Yes, sir.

Q. Do you get regular quarterly fees?

A. Yes, sir.

Q. What have you been receiving from the Society for your compensation for your performing rights for profit on the average each year for the past ten years?

A. Well, I would say about anywhere from \$16,000 to

\$18,000 a year.

Q. Can you look at this list, Plaintiffs' Exhibit 6, and name some of the outstanding successful hit numbers that

[fol. 436] you published.

A. "I'd Love to Fall Asleep and Wake Up in My Mammy's Arms." "I'll Get By." "Mean to Me." "Walking My Baby Back Home." "Where the Blue of the Night Meets the Gold of the Day," Bing Crosby's film song. "Take My Heart." "I'm Going to Sit Right Down and Write Myself a Letter." "I Don't Know Why I Love You Like I Do."

Q. Were any of those hit songs published by you prior to 1923?

A. Yes.

Q. Which?

A. "I'd Love to Fall Asleep and Wake Up in My Mammy's Arms."

Q. How many copies of that song were sold?

A. Over a million.

Q. Now, were any of those hit songs published after 1923?

A. Yes.

Q. And how many copies of those were sold?

A. Well, the big hit songs sold on an average of around between 250,000 and 350,000 copies.

Q. Has there been a marked change in the amount of copies sold prior to 1923 and the amount of copies sold subsequent to 1923?

[fol. 437] A. Yes.

Q. Has the change been downward?

A. There has been a marked decrease in the sale in recent years, of course. I had some songs prior to 1923 that were not big hits, which sold 500,000 to 600,000 copies: "In Shadow Lane," for instance, that was published before 1923. "Put Away that Ray of Golden Sunshine" sold over 350,000 copies, and they were not big hits.

Q. Now, take a song like "Take My Heart," that was

one of your outstanding songs, wasn't it?

A. Yes.

Q. It was a Number One song on the Hit Parade in 1936!

A. In 1936, that's right.

Q. What is this Hit Parade?

A. The Hit Parade is a commercial program, advertising Lucky Strike cigarettes, and they make a survey throughout the country of the popularity, both as to performance and as to sales of music of any given song.

Q. Is that Hit Parade fairly accurate in the business?

- A. Yes. In my opinion, I would say it is fairly accurate.
- Q And is it looked up to by members of the profession [fo 438] as an accurate and correct description of the so is that are current and popular?

A. That's right.

Q. Now, how many copies of the sheet music "Take My Heart" were sold in 1936?

A. 100,000 copies.

Q. Now, was that song "Take My Heart" as good a song and as popular a song as one of your earlier hits prior to 1923? A. Well, I would say this, that it had on a survey made by the American Society, close to 26,000 uses, that is, on a partial survey that we make, and I think the top song of our survey in that year had 29,000 uses. I know it was very high in the number of uses on our partial broadcast checkup for that year.

Q. Now, with respect to your musical compositions, do you give the publishers the right to license the mechanical

reproduction of your compositions?

A. Yes.

Q. How do you split that money with them?

A. Well, I get 50 per cent of what he gets.

Q. Well, now, prior to 1923, were the royalties from mechanical reproduction substantial?

A. Very substantial.

[fol. 439] Q. How did they run in comparison with the sale of sheet music; what percentage would you say?

A. Oh, I would say on a big song, a hit song, you could get sometimes more than you could get out of the sale of sheet music; again as much, if not more, on the mechanicals.

Q. Does that ratio or proportion hold true today with

regard to your music?

A. No, I wouldn't say it is true at all. Up to about last year it depreciated about 90 per cent with regard to mechanical; in the last year there has been a little comeback, a slight comeback in the sale of mechanicals.

Q. Now, what do you do at the present time, say for this past year, 1939, from the sale of sheet music of all of your compositions?

A. In 19391

Q. Yes.

A. A negligible amount of money.

Q. What would you call it? Let us get the figures.

A. Well, 1939 was a kind of a poor year for me.

Q. Let us take the last five years; going back to 1935, what have you been getting on the average from the total sales of your sheet music each year?

A. Oh, about back in 1936 I got about \$35,000 to \$36,000.

It has been getting less since that time.

[fol. 440] Q. What did you get in 1935 down to the present time, each year, for mechanical royalties of all of your compositions?

A. Much less than that; much less than the sheet music

royalties. I can't give you the exact figure.

Q. Has the money you received from the American Society of Composers, Authors and Publishers for the public performance for profit been greater in amount than the combined moneys you received from the sale of sheet music and mechanical royalty in the past ten to fifteen years, would you say?

A. I would say that the money I received from the American Society of Composers, Authors and Publishers, was more than double the combined money, if not treble, of

mechanicals and sheet music.

Q. If you were unable to obtain money from the American Society of Composers, Authors and Publishers for the public performance for profit of your compositions, could you remain in business and practice your profession as a

songwriter?

A. Well, it would handicap me so seriously, it would be an economic problem that I would be confronted with. If a condition like that arose, I would hate to contemplate it. [fol. 441] Q. In your contracts with your publishers for the publication of your compositions, who as a rule obtains the copyright or the right to copyright?

A. The publisher.

Q. Do you retain an interest in the public performance for profit right in your compositions?

A. Yes, sir.

Q. And are your contracts with the publishers made on the basis of you and the publisher each sharing 50 per cent of these moneys from the public performance for profit?

A. Yes, sir.

Q. That has been going on since the Society has been in existence; is that right?

A. Yes, sir.

Q. And that is the usual and customary arrangement between all writers and all publishers today?

A. It has been, to my knowledge.

Q. Are you willing to give the publisher the right to exercise complete supervision over the public performance for profit of your compositions?

A. I should say no.

Q. Are you willing to give the manufacturers of rolls and records the right to supervise or to collect for you or

[fol. 442] in your behalf moneys for the public performance

for profit of your compositions?

Mr. Boggs: I object on the ground it is irrelevant and immaterial, and the sections of the statute to which it relates have been repealed, and that the State of Florida has disclaimed any intention of enforcing it.

Mr. Frohlich: You may answer.

A. In the past I have not been so minded as to give this right, and I certainly would hate to do so in the future, if I possibly could help it.

Q. Do you want to retain for yourself the right to exercise supervision with respect to the performance for public

profit on your compositions?

A. Well, I am satisfied with the present administrative arrangements, where I have a 50 per cent administrative right and a small performing right with the publisher.

Q. And the rights are supervised by the American Society of American Composers, Authors and Publishers?

A. Yes.

Q. And you want to continue that arrangement?

A. Yes, that is very satisfactory to me.

Q. You want to remain a member of of that Society?

A. I certainly do.

[fol. 443] Q. And you want to keep your contract with ASCAP alive?

A. Yes.

Q. And you want to continue obtaining the benefits of that contract?

A. Yes.

Q. You are not willing to give it up?

A. No.

Q. And you do not want it to be declared null and void!

A. Naturally not.

Q. Now, from time to time you renew your copyright, don't you, as the original term expires?

A. Well, my first renewal, I don't believe, will come up

until 1943.

Q. Have you had any negotiations with publishers for the publication of your works as and when they are going to be renewed?

A. Not yet.

Q. Are these renewal rights valuable to you?

A. That's what I've been building for all these years.

Q. And do you have reasonable expectation of deriving compensation for the continued publication from the performing rights and mechanical rights of your compositions [fol. 444] as and when they become due after twenty years thereafter?

A. Well, I have been hoping that that would be the

heritage for my wife and children.

Q. You regard your catalogue of copyrighted musical compositions as your property, don't you?

A. Naturally.

Q. And you want to preserve and treasure that? What is the answer?

A. Yes.

Q. Now, if you were acting alone and not a member of any combination or not a member of ASCAP, could you proceed in the State of Florida to fix a price on your compositions with respect to the public performance for profit in that State?

A. Well, I think it would be almost impossible, if not entirely impossible, for me to do that, for the simple reason that it would be putting a mathematical gauge on my product. I wouldn't know what to charge one person as against another person; I wouldn't know what kind of a use they had for it; they might want it for a longer period of time at one time than at another time; or they might want to use what I considered my first song.

Q. Would you have to take into consideration the manner [fol. 445] of use by the performer of your compositions?

A. I would have to take that into consideration.

Q. Would you have to take into consideration the nature of the audience, the size of the orchestra, and the nature of the establishment and other elements of that kind?

A. Surely.

Q. Would you have to make a personal investigation of the 367 establishments in the State of Florida that used your music?

A. Yes, sir.

Q. And, by the way, your music is performed on the radio, isn't it?

A. It certainly is.

Q. Have you heard them performed yourself?

A. Yes.

Q. Is it performed on the National Broadcast chain of hookup and on the Columbia Broadcasting System hookup?

A. I guess it is performed on all radio stations.

Q. Well, then, you heard them performed yourself on the National hookup?——

Mr. Boggs: Counsel for the defendants here interpose an objection to the highly leading form of questions which plaintiffs' counsel is following.

[fol. 446] Q. Have you heard your compositions performed on the national hook up of the National Broadcasting Company!

A. I hear them performed all the time. They are being performed night and day, presently and in the past.

Q. And have you heard them performed also on the

Columbia Broadcasting hookup?

A. I have heard them performed on the Columbia, NBC, WOR, and on a lot of the minor stations throughout the country. I have heard them performed all over the radio network.

- Q. Now, if you were to attempt to fix a price for the public performance for profit of your compositions in the State of Florida, would you have to make an investigation yourself or have someone do it for you with respect to the various establishments that perform music in that State?
- A. Well, I have made up my mind that I would have to do so much in the State of Florida that I probably would not have much time to think of writing a song.
- Q. Well, now, let us take the various establishments in that State. Take the Rink; there is a roller-skating rink there?

A. Yes.

Q. Would you have to look at this establishment to see [fol. 447] what would be the fair charge to make with respect to an ice-skating rink as distinguished from a roller-skating rink?

A. I suppose I would.

Q. Would you have to do that?

A. If I wanted to be fair, I would have to do that.

Q. Take stadiums, where baseball is played, and where vaudeville is played, where they have lances, some have loud speaker systems; would you have to look up these

establishments and try to ascertain and fix a fair price for these establishments?

A. I would have to do that.

Mr. Boggs: Counsel objects to the leading form of questions.

Q. Well, what other types of establishments are there in the State of Florida that you know of, where music is played, in addition to rinks, stadiums, road houses, radio stations and hotels?

A. Restaurants, cabarets, dance halls, theatres, all kinds

of theatres.

Q. Are there sound trucks in the State?

A. Sound trucks, and probably television trucks, for all I know.

Q. Are there cafes in that State?

[fol. 448] A. I said cabarets; cafes, yes.

Q. Are there department stores that play music in that State?

A. Yes, sir.

Q. Are there expositions in the State?

A. There are.

Q. Are there fairs and carnivals in the State?

A. There are.

Q. Are there circus performances given in that State!

A. Yes, sir.

Q. Are your works performed in the establishments you have just mentioned?

A. They are.

Q. And do any two establishments in these various groups

in the State operate in the same way?

A. I don't believe any two establishments operate in the same way; it would be very difficult for me to determine how each individual establishment operated.

Q. In order for you to fix a fair price for the public performance for profit of your compositions with respect to those establishments, would you have to make a personal investigation as to each establishment to see how it operates and what the nature of the operation is?

[fol. 449] A. Yes, air.

Q. Now, could you personally do that?

A. I don't see how I could personally do it. And if I had to spend my time developing an organization to do it, I

don't see what time I would have to write songs; I don't believe I could do it, as a question of mathematics; I don't think I could do it and be fair to the users.

Q. Have you the financial resources to hire an organization to go down to Florida to do that for you?

A. I doubt if I could even do it economically.

Q. Have you the financial resources to hire investigators to see that your works are not infringed in the State of Florida?

A. I am not.

Q. Are you financially able to employ a lawyer in the State of Florida to seek out infringements of your works?

Mr. Boggs: The question is objected to as immaterial and irrelevant.

Mr. Frohlich: You may answer.

A. I have not.

Q. Does the American Society of Composers, Authors and Publishers do that for you today?

A. Yes.

[fol. 450] Q. Would you be able to compile and complete an accurate list of all of your copyrights, and put on the list the name and title of the copyrighted compositions, the date of copyright, the number or the identifying symbol given thereto in the United States Copyright Office, the name of the author, the name of the publisher, the name of the present owner of the copyright to such composition, and the name of the present owner of the performing rights thereto?

A. That would seem to be a very difficult task.

Q. Are you willing to file any such list with the authorities of the State of Florida?

Mr. Boggs: That is objected to as immaterial and irrelevant.

A. I certainly would not like to do that.

Q. Would you be willing to pay two cents a composition for the filing of such a list and two cents a composition for duplicates of the list to the State of Florida?

A. No, sir.

Q. Do you know what a blanket license is?

A. Yes, sir.

Q. Does the Society license users in the State of Florida under blanket licenses?

A. Yes, sir.

[fol. 451] Q. Do you want the Society to continue licensing users in the State under such blanket licenses?

A. That seems to be the ideal status.

Q. Do you want to give up the licensing of your compositions under a blanket license?

A. No, sir.

Q. Are you able at the present time to fix and determine the fair price to you and to the user of the public performance for profit of any of your compositions in the State of Florida with respect to television?

A. No. sir.

Q. Have you any information available to you on television today that would assist you in coming to a fair price for that right?

A. No, sir.

- Q. Are you willing to have the manufacturers of music rolls and records place upon the records and rolls which they sell in the State of Florida a price for the public performance rights for profit of your works?
- Mr. Boggs: That is objected to as immaterial and irrelevant; also because the sections of the statute to which it relates have been repealed, and the State of Florida has disclaimed all intention to enforce those sections.

 [fol. 452] Mr. Frohlich: You may answer that.

A. No, sir.

Q. And if a manufacturer of rolls or records did fix such a price for public performance for profit on the rolls and records in the State of Florida, are you in a position, legally or otherwise, to compel such manufacturer to give you any of that money?

A. I am not.

Q. Are you willing to have your publisher fix any price upon your compositions for the public performance for profit in the State of Florida?

A. I haven't heretofore been willing; I certainly am not

now.

Q. Are you willing to have your musical compositions made available free to the users in the State of Florida when they are established outside of that State?

A. No, sir.

Q. Have you ever given a license to a manufacturer or producer of motion pictures to synchronize your compositions on their films?

A. I have done that through the publishing house.

Q. In other words, there are some agencies that do that for writers, including yourself?

A. Yes, sir.

[fol. 453] Q. And from time to time have your compositions been used by producers of motion pictures in their pictures?

A. There have been certain times where I worked for motion pictures; I always did that through the publishing

house.

Q. Now, whenever you have given the right to synchronize your compositions with pictures to a producer of pictures, have you ever been informed by him as to the namber of places where the picture is going to be performed?

A. No.

Q. Have you ever asked for such information?

A. No.

Q. And is the manner or the extent of the exhibition of the performances of the picture taken into consideration when you make your contract with the producer of pictures?

A. No, sir.

Q. Is your license to the producer of pictures limited strictly to the right to reproduce the composition on the sound track of the picture?

A. Yes.

Mr. Frohlich: You may cross-examine.

[fol. 454] Cross-examination.

By Mr. Bennett:

- Q. Are you a member of the Board of Directors of ASCAP?
 - A. Yes, sir.
- Q. Are you a member of any of the committees of ASCAP, such as the Membership Committee?

A. Yes.

Q. Which Committee?

A. I am a member of the Membership Committee and a member of the Relief Committee.

Q. Any others?

A. I am a member of the Finance Committee.

Mr. Boggs: I have a question.

By Mr. Boggs:

Q. In your direct examination I understood you to say that while the publisher took the right of ownership of the copyright, that an arrangement was made between you and the publisher by which each of you got 50 per cent of the small performance rights. Was that correct?

A. No, not 50 per cent of the small performance right. My performing right was originally assigned to ASCAP.

Q. Yes.

A. And the publisher took in all of my compositions sub-[fol. 455] ject to that assignment; he had notice of that assignment.

Q. Well, you didn't mean in your direct testimony then to say that actually there was a definite allocation of specific moneys for royalty to public performance rights on your pieces as differentiated from that of all the other ASCAP music, did you?

A. I only meant with regard to mechanicals and foreigns, where I get 50 per cent of what he gets; for the small performing right I also assigned to ASCAP originally.

Q. You take your compensation there out of the general pot, don't you?

A. That is right.

Mr. Boggs: All right.
Mr. Bennett: That is all.
Mr. Frohlich: That is all.

(Adjourned to Wednesday, February 7, 1940, at 10:30 o'clock a. m.)

[fol. 456] 1450 Broadway, New York, N. Y., February 7, 1940, 10:30 a. m.

Met pursuant to adjournment.

Appearances: As before.

WILL VON TILZER, called as a witness in behalf of the Complainants, having been first duly sworn, did depose and say:

Direct examination.

By Mr. Frohlich:

Q. What is your full name and address?

- A. Will Von Tilzer. Brill Building, 49th Street and Broadway, No. 1619.
 - Q. New York City?

A. New York City.

Q. What is your occupation?

A. Music publisher.

Q. Now, how many years have you been in that business?

A. Oh, I would say about 36 or 37 years.

Q. And you are a brother of Harry Von Tilzer? [fol. 457] A. Yes.

Q. He is a songwriter?

- A. Yes, sir; songwriter and publisher.
- Q. Are you a member of the American Society of Composers, Authors and Publishers?

A. I am.

Q. When did you join the Society?

A. Back in 1914.

- Q. Have you continuously been a member of the Society since then?
- A. With the exception of a short period in 1919 into the first part of 1921, about a year and nine months of that time I was out.
- Q. And since 1921, have you been continuously a member of the Society?

A. Yes, sir.

Q. And you entered into an agreement with them, a membership agreement, each five years?

A. Yes, sir.

Q. Did you enter into an agreement with them in July, 1935?

A. That's right.

Mr. Frohlich: It is stipulated that the witness has an agreement with the American Society of Composers, [fol. 458] Authors and Publishers identical with the agreement in evidence as Plaintiffs' exhibits 2 and 4.

Q. Now, where is your publishing business located?

A. 1619 Broadway.

Q. And do you acquire rights under which you publish musical compositions?

A. By contracts with writers, composers and authors.

Q. Did you produce a contract known as a uniform standard popular songwriters contract with one of your writers!

A. Yes.

Mr. Frohlich: It is stipulated that a copy of the contract shall be used in place of the original.

I offer it in evidence.

Mr. Boggs: No objection.

(Contract received in evidence and marked Complainants' Exhibit 7, of this date.)

Q. Is that contract, Plaintiffs' Exhibit 7 typical of the contracts made between you and your writers since 1932?

A. Yes, I should say so.

Q. Mr. Von Tilzer, you have had a great deal of experi-[fol. 459] ence in publishing music over these 36 years haven't you?

A. I have, I would say.

Q. And you have published a great many compositions!

A. Yes.

Q. Are you personally acquainted with a great many writers or publishers throughout the country ?

A. Naturally.

Q. Now, prior to the time you joined the American Society in 1914, did you or your company ever receive any compensation for the public performance for profit on any of your compositions?

Mr. Boggs: The question is objected to on the ground that it is immaterial and irrelevant.

Mr. Frohlich: You may answer that.

A. We never did.

Q. When for the first time did you receive any moneys on compositions for the public performance for profit of your compositions?

A. As I remember, the first time the Society made any

distribution of funds was around 1922.

Q. Did you receive that money through the American Society!

A. Yes, sir.

- Q. Have you been receiving compensation from the right [fol. 460] to publicly perform for profit your compositions from the American Society of Composers, Authors and Publishers since that time?
 - A. Yes.
- Q. And has that compensation come to you in regular periods?
 - A. Yes.
 - Q. Quarterly periods?
 - A. Quarterly periods.
- Q. Is that the only source from which you received compensation for the public performance for profit of your musical compositions?
 - A. That is the only source.
- Q. Now, how much did you receive from the Society in 1935, approximately?
 - A. 1935, around \$24,000, Lwould say.
- Q. How much did you receive an average each year for the past ten years from the American Society of Composers, Authors and Publishers?
- A. I would say on an average—including the past year of 1939?
 - Q. Including the year 1939, yes.
- A. It averaged \$22,000; \$21,000 to \$22,000; I am not positive of that. That is quite enough, I should say.
- [fol. 461] Q. Now, is your contract with the American Society of Composers, Authors and Publishers valuable to you?
 - A. Yes, sir.
- Q. And do you want it destroyed and declared null and void?
 - A. I do not.
- Q. Do you want to continue your relations with the American Society of Composers, Authors and Publishers?
 - A. I most certainly do.
- Q. And do you want to continue that relationship as long as you remain in business?
 - A. Positively.
- Q. When you publish musical compositions, do you make a contractual arrangement with manufacturers of records and rolls for the mechanical reproduction of these compositions on records and rolls?
 - A. Would you mind asking that again?

Q. When you publish a musical composition, do you in many instances make a contractual arrangement with the manufacturers of records and piano rolls for a mechanical reproduction of those compositions on records and rolls!

A. We do.

Q. Now, what do you receive from these manufacturers of records and rolls?

[fol. 462] A. Royalties.

Q. And how much does that amount to as a rule?

A. It varies. The record people—there are not so many rolls made nowadays, but the record people, we have a ceiling of two cents compulsory license, and that varies depending upon the retail price of the records, down to a cent and a quarter, and a cent very often.

Q. And out of the moneys that you receive from those manufacturers, do you pay any proportion to your writers!

A. Yes.

Q. What is the usual proportion paid by you?

A. Up until recently it has been 33½ per cent to them; in a great many cases recently the rate has been established as 50-50, they to receive 50 per cent and the publisher to receive 50 per cent.

Q. When you make your arrangement with the manufacturer of rolls and records, do you give such manufacturer the right to public performance for profit on such rolls and

records

A. We do not.

Q. Would you ever want to give such right to the manufacturer?

A. By no means.

[fol. 463] Q. Have you any control over the sale of those records and rolls which are manufactured by a particular manufacturer with whom you contract?

Mr. Boggs: I object to the question as incompetent, irrelevant and immaterial.

A. We believe we have the moral right and we would like to have that right, but I don't think that the way today has been found as yet.

Q. Are you able to dictate to the manufacturer of rolls and records?

A. In what way?

Q. To compel him to put a price on his records or rolls

with respect to the performing right for profit of records and rolls sold in the State of Florida.

A. No.

Q. Is there any arrangement, contractual or otherwise, between you and any manufacturer of rolls or records, under which you could compel such manufacturer to give you a portion of the money for the public performance for profit on the rolls or records if they were sold in the State of Florida?

Mr. Boggs: I object to the question as incompetent, irrelevant and immaterial, and as dealing with a portion of the statute which has been repealed, the enforcement of which [fol. 464] the State of Florida has disclaimed.

A. There are no such arrangements between ourselves.

Q. Have you any contractual arrangement or other arrangement with any manufacturer of rolls or records under which you could compel the manufacturer to determine and fix a price within the State of Florida for the public performance for profit of the rolls and records that he sells in the State of Florida?

Mr. Boggs: The same objection.

A. There is no such arrangement between ourselves and

the manufacturers of rolls and records.

Q. Would you be willing to permit a manufacturer of your rolls and records to determine and fix a price to be printed on the particular rolls or records of your composition under which he fixes the price for the public performance for profit of that roll or record within the State of Florida?

Mr. Boggs: That is objected to as immaterial and irrelevant.

A. We would not permit.

Q. Would you be willing to permit any manufacturer of rolls or records of your compositions to act as your agent in the State of Florida in order to fix and determine the price [fol. 465] to be charged for the public performance for profit of your compositions in the State of Florida?

Mr. Boggs: The same objection.

A. No.

Q. Assuming that there are approximately 367 places or establishments in the State of Florida which use copy-

righted musical compositions for public performance for profit, would you be able to determine and fix a price for the public performance for profit of your compositions with respect to those 367 users in the State of Florida?

A. It would be almost impossible.

Q. If you were going to determine to fix a price for the public performance for profit of your compositions in the State of Florida, would you be required to obtain information to help you to do that?

A. Undoubtedly.

Q. Would you be able to obtain data and information with respect to the 367 places or establishments in the State of Florida without being required to pay someone in the State of Florida to make inquiries in your behalf?

A. I don't think so.

Q. Now, have you tried to determine and fix a reasonable price, or any price, for the public right of performance of your compositions in the State of Florida; and what would [fol. 466] you have to do? Just tell us all the steps that you would have to take.

A. Well, we have to examine into the nature of the place.

Q. The business they do?

A. The seating capacity, innumerable things that I can't think of offhand.

Q. Would you have to employ anybody?

A. I don't see how it could be done without.

Q. Would such a person have to be skilled in music?

A. Unquestionably.

Q. From your knowledge of the salaries paid in the business, what would that cost you?

A. We would have to pay a salary to a person like that-

Mr. Boggs: The question is objected to as incompetent and irrelevant, and because the statute does not necessitate such action on the part of the publisher.

A. I should say not less than \$100 a week, most likely more, probably.

Q. Would you in addition to a salary have to pay hotel bills and traveling expenses?

A. I should say so.

Q. Would you have to employ a lawyer in the State of Florida to help you?

[fol. 467] Mr. Boggs: The same objection.

A. From my observation, I would say we would have to,

certainly.

Q. Do you feel that you are financially able at this time to employ investigators and attorneys in the State of Florida to protect you against infringements of your compositions in that State?

Mr. Boggs: The question is objected to as irrelevant and immaterial.

A. I am not in a financial position to do that.

Q. Does the American Society of Composers, Authors and Publishers look after your interests with respect to the right of public performance for profit in the State at the present time?

A. They do.

Q. And are you anxious to have them continue to protect your rights in that State?

A. Yes.

Q. Now, in the course of your career as a publisher have you published music known as hit songs?

A. Quite a few.

Q. Can you tell us any of the names of a few of the more important songs that you published that were hit songs? [fol. 468] A. At any time, going back since the Society started?

Q. Well, since 1914.

A. 19141

Q. Or even prior; it doesn't make any difference.

A. "You Made Me Love You," subtitle "I didn't want to do it." "When You're a Long, Long Way From Home." "Oh, Frenchy." "I May Be Gone For a Long, Long Time," "Go, By Jingo." "I'll Be With You in Apple Blossom Time." "I Used to Love You But It's All Over Now." "My Little Girl." "Just Around the Corner."

Q. Please confine yourself to hit songs that were pub-

lished prior to 1923.

A. I see. Then exclude "Just Around the Corner." I think the others come in that period. "Muddy Water." Those two. And if you want the others, I can give you the others, if I want to concentrate.

Q. Now, those that you mentioned that were published prior to 1923, did any of them sell a million or more copies of sheet music?

A. Yes. "You Made Me Love You" sold more than a million. "Oh, Frenchy" sold more than a million. "My Little Girl" sold more than a million. Those I can think of offhand.

Q. And with respect to those that did not sell more than a million copies, what would you say was the average sale [fol. 469] of the sheet music of those hits?

A. Anywheres from a half million to 750,000 to 800,000

copies.

Q. Did you publish any hit songs after 19231

A. Yes, I published "Muddy Water," and published "Just Around the Corner," "I Love Me," in recent years. "Be Still, My Heart." "Believe It, Beloved."

Q. Now, of those hit songs that you published after 1923,

did any of them sell a million copies or more?

A. Now, they started to slow down about that time. "I Love Me," which was quite a big song, went around 350,000 co₁ ies, as near as I can recall it. "Just Around the Corner" was approximately the same. And in more recent years "Be Still, My Heart," was published in 1934, that sold fine—When all the return copies came in I think it figured between \$0,000 and \$90,000—yet it was considered the greatest song of that year, not in point of sales, but in point of quality, the general opinion of the writers and generally all over the business."

Q. Take these hit songs prior to 1923, for how long a

period did they remain popular and active?

A. Well, I should say they averaged around a year in those days; close to a year.

Q. Now, take the hit songs after 1923: for how long a

[fol. 470] period have they remained popular?

A. Well, if they go two months we are really doing well. Once in a while there is an exception, but usually after a two months' period they are through.

Q. From your knowledge of the business, to what do you attribute that change in the amount of copies sold and the

life of popularity?

A. There is no question as to the reason: they are pounded to death on the air and the public tires of them very quickly and have new songs take their place. It is just common knowledge.

Q. Is your business from the sale of sheet music and mechanical records as profitable today as it was prior

to 1923?

A. There is no comparison.

Q. Well, is it more profitable or less profitable?

A. It is much less profitable than it was in those days.

Q. Are the moneys that you receive from the American Society of Composers, Authors and Publishers a vital and necessary part of your business today?

A. It is so necessary that I think we would all be out of business if it were not for the money—in fact, I am sure of it.

Q. Well, what would you say the value of the American [fol. 471] Society of Composers, Authors and Publishers' contract is to you today; what is its value to you in dollars and cents?

Mr. Boggs: The question is objected to as incompetent, no proper foundation having been laid.

A. I don't know just how to put it in words, excepting the answer that I gave you before, that without it there

would be no use continuing our business.

Q. If the American Society of Composers, Authors and Publishers is to continue, is there a reasonable expectation that you would enter into future contracts of five year periods similar to the one that is now in existence?

Mr. Boggs: I object to that as calling for a speculative answer.

A. I would not want a condition where there would be

no society for the collection of fees.

Q. I mean by this question, Mr. Von Tilzer, that if the Society remains in business, may you reasonably be expected to continue as a member of that Society?

A. Positively.

Q. And you would make further contracts for five year periods or longer with the Society?

A. Unquestionably.

[fol. 472] Q. Do you publish any compositions that are used in production on the stage?

A. Do you mean vaudeville performances?

Q. I mean dramatic music roles or songs of stage production or musical comedy.

A. We did publish.

Q. You did!

A. Yes.

-Q. Did you publish any as far back as 1919?

A. I could not say offhand; we had a show called "Honey

Girl." It was back around that time. I do not know just

exactly what year; I think it was before 1923.

Q. Well, from your knowledge of the business, would you say that songs that had been published, that are being performed in stage productions, are frequently restricted with respect to performances?

A. Oh, yes; I know that they are.

Q. Do you know the reason for that restriction.

A. Yes. In that case the show is the first consideration and they have to keep the songs as fresh as possible in order to continue the run of the show. I am not an authority on that subject, but that is to the best of my knowledge and intelligence. I think that would be the only reason that they have for the restriction.

[fol. 473] Q. When you publish a song today are you able to tell immediately upon publication whether that song

is going to be popular or not?

A. Ask that question again. I want to see if I heard you right.

Q. (Question repeated by reporter.)

A. I would like to ask a question. What do you mean by publication?

Q. Songs that you publish.

A. The answer is No.

Q. Is there a great deal of uncertainty with respect to

the ultimate success of these songs?

At I am trying to think of a superlative phrase that would give you a sufficiently clear idea of just how much so that is the case. It is as big a gamble as I guess there is in anything today.

Q. It is impossible to tell, isn't it, when a published song

is going to be a hit or not?

A. More so than ever in the history of the business. There was a time when we had some certain elements that would help us a bit. Today we are so far away from it that until the public start clamoring for the song it is all guesswork.

Q. Now, a song that becomes a hit has greater value to

[fol. 474] you than a song that is not a hit?

A. Naturally.

Q. If you were required to determine and fix a price to be charged for the rendition of your copyrighted musical compositions in the State of Florida, to fix a price upon a

particular composition that is sold in the State of Florida, for all uses and purposes, including public performance for profit, could you determine upon publication of the composition what price you could charge for public performances for profit, this price to be fixed by you for the complete life of the copyright of the composition?

Mr. Boggs: The question is objected to as immaterial and irrelevant, and as dealing with a portion of the statute which has been repealed, and the enforcement of which the State of Florida has disclaimed.

A. I would not have the least idea how to go about to get such a result; I don't think it is possible.

Q. Well, when you publish a composition, are you able to tell immediately upon the publication that the song is or is not going to be valuable to you?

A. No, I would not know.

Q. It takes a little time before you find that out, isn't [fol. 475] that so?

A. Yes.

Q. Sometimes it takes a long time?

A. That's right.

Q. And after a song becomes a hit its value is greatly enhanced to you, isn't that so?

A. Yes.

Q. You would want to average more for the performing right on that song than for a song that is a failure?

A. That is naturally so.

Q. So you could not immediately upon publication of the song fix and determine a proper, fair price to you or to the user for the public right of performance in the State of Florida?

Mr. Boggs: Same objection is interposed as to the last objection.

A. I would not.

Q. I ave you any information that would help you today to fix a price and determine the price for public performance for profit on your compositions in Florida with respect to television?

A. No.

Q. Do you know at this time just what value television

may have in respect to your copyrighted musical composi-[fol. 476] tions in the future in the State of Florida?

A. I do not.

Q. Are you able to obtain data or information from any source that will help you ascertain such value?

A. No.

Q. Can you tell today when you publish a composition what price to fix on your composition in the State of Florida for public performance for profit with respect to the hotels in the State of Florida?

A. I cannot.

Q. Can you now, if you publish a composition, determine and fix a price to be charged for the purpose of public performance for profit in the State of Florida of that composition for the full 28 years of the copyright of the composition and the renewal period of 28 years?

A. No.

Mr. Boggs: Repeat the same objection.

Q. Your answer is No?

A. No.

Q. Now, have many of your compositions been sold in the State of Florida during the years that you have been in business?

A. I assume so.

Q. Do you deal with jobbers? [fol. 477] A. Yes.

Q. In this business how is music sold? Just please tell

us the procedure.

A. Well, it is sold direct to the dealers; and it is sold through a jobbing organization who distributes the music to many dealers.

Q. I am speaking now of sheet music.

A. I know. And when you asked the question before I hesitated because I don't seem to remember any stores down in the cities of Florida that we did any business with direct. I think most of that business was done through jobbers.

Q. Are these jobbers located in various parts of the United States?

A. Well, naturally, Chicago; there are a few smaller jobbers situated in some other of the larger cities. Q. Have you any agents or representatives of your own in the State of Florida?

A. No.

Q. Well, now, when you sell this sheet music to jobbers throughout the United States, do you know of your own knowledge whether these jobbers resell that music to various dealers in the United States!

Mr. Boggs: The question is objected to as no proper [fol. 478] foundation has been laid.

A. I know they ship that music, but the conditions are such in the business nowadays that music is not sold until it is actually paid for. So much of that music that is sold to the jobbers and then distributed to the dealers comes back.

Q. Are these jobbers at liberty to sell your music anywhere?

A. They are.

Q. There is no restriction placed upon where they sell the music after you have delivered it to the jobber, is there?

A. None.

Q. So that once a jobber gets hold of the music you lose all further control over it; is that right?

A. Yes.

Q. And you can't recall any of that music from the jobber, can you?

A. No.

Q. Now, have you any control whatever over the sheet music which passes from you into the hands of the jobbers?

Mr. Boggs: The question is objected to as being immaterial and irrelevant.

[fol. 479] A. No.

Q. Is there any way by which you could imprint a price on the particular copy of sheet music for the public performance for profit, or any other use, once it is out of your hands and into the hands of the jobber?

Mr. Boggs: The question is objected to on the ground that it is immaterial and irrelevant and as dealing with questions of the statute which have since been repealed, and which the State of Florida has disclaimed all intentions to enforce.

A. No, is the answer.

Q. Do you know whether your music has been performed in the State of Florida?

A. Yes, I know it has.

Q. Have you yourself ever been in the State of Florida!

A. No, I haven't.

Q. Have you heard your music performed over the national hookup of the National Broadcasting stations?

A. Yes.

Q. And have you heard your music performed over the National hookup of the Columbia Broadcasting System?

A. Yes.

Q. And is that true over the years?
[fol. 480] A. Yes; over the last ten years, I should say.

Q. Now, how about your receipts for the mechanical reproduction of records and rolls? Has there been a falling off or a diminution of the moneys received from such sources in the last fifteen to twenty years?

A. For a while it was down to almost nothing.

Q. Would you say that the history of the decline in the receipts from mechanicals is practically the same as that of sheet music?

A. Unquestionable.

Q. Have you a complete catalogue of all musical compositions published by your company?

A. Not - atalogue, no. We have some sort of typewritten list; we have never had a catalogue.

Q. Is that typewritten list you have complete?

A. I would not say it is entirely complete; that would be rather difficult, it goes back for so many years it would be almost impossible to put that into our prospectus.

Q. Would you be able to file with the Comptroller of the State of Florida a list which is complete, of each and every musical composition that has been published by you, in which you own the copyright, which list contains the name and title of the copyrighted composition, the date of the copyright, the number or other identifying symbol given thereto [fol. 481] in the United States Copyright Office, the name of the author, the name of the publisher, the name of the present owner of the performing right thereto!

Mr. Boggs: The question is objected to as immaterial and irrelevant, as the statute makes no mandatory require-

ment that a complete list should be filed, but only those compositions which are entitled to be licensed for public performance in the State of Florida.

A. I would not be able to furnish such a list.

Q. Have you information that would enable you to make up such a list?

Mr. Boggs: Same objection.

A. I don't believe so.

Q. As a matter of fact, a great many of the compositions published by you from time to time become obsolete, don't they?

A. That is right. They are no longer active.

Q. They are no longer active?

A. That's right.

Q. You even run out of print of the copyrighted sheets of music, don't you?

[fol. 482] A. Yes.

Q. Is that true of most publishing houses?

A. I believe so.

Q. Now, you know that the Society at the present time licenses its users in the State of Florida by blanket licenses?

A. That is my understanding.

Q. And do you want your compositions licensed and do you want to have the blanket licenses on your compositions continued in the State of Florida?

A. I do.

Q. You don't want your compositions licensed in any other way, do you?

A. I do not.

Q. And do you want to retain the right to have blanket licenses issued for the public performance for profit of your compositions in the State of Florida without any conditions attached thereto?

A. Yes.

Q. Do you want to fix or determine any price for the public performance for profit with respect to your compositions in the State of Florida at this time?

Mr. Boggs: The question is objected to, as the wishes of the witness are irrelevant and immaterial issues in this [fol. 483] case.

A. I do not.

Q. If you were to file a list of your compositions with the Comptroller of the State of Florida, do you think that you could get up a list which would be so accurate that you could make an affidavit to support that list?

A. May I have that question repeated?

Mr. Boggs: The question is objected to as being violently leading.

Mr. Frohlich: It is a simple question.

Q. (Question repeated by reporter.)

A. I believe I could. It sounds like an involved question to me.

Q. I will ask the question in another way, then. Suppose you try to conform to the statute and got up a list of your works and filed that list—

A. What do you mean, conform to the statute?

Q. Let me read Section 2 of the statute to you of House Bill 1103 and Senate Bill 635:

"Section 2. It shall be unlawful for any person to sell, license the use of, or in any manner whatsoever dispose of, in this state, the performing rights in or to any musical composition or dramatico-musical composition which has [fol. 484] been copyrighted, and is the subject of a valid existing copyright, under the laws of the United States, or to collect any compensation on account of any such sale, license, or other disposition, unless such person:

"(a) Shall first have filed with the Comptroller on forms prescribed by the Comptroller a list describing each such musical composition and dramatico-musical composition, the performing rights in which said person intends to sell license or otherwise dispose of in this state, which description shall include the following: The name and title of the copyrighted composition, the date of the copyright, the number or other identifying symbol given thereto in the United States copyright office, the name of the author, the name of the publisher, the name of the present owner of the performing rights thereto. Additional lists of such copyrighted compositions may be filed by any such person from time to time, and shall be subject to all the provisions of this Act. A filing fee of two cents a composition shall be

required by the Comptroller for filing any list under this

"(b) Shall simultaneously file an affidavit which shall [fol. 485] describe the performance rights to be sold, licensed or otherwise disposed of and shall state that the compositions so listed are copyrighted under the laws of the United States, that the facts contained in the list to which said affidavit relates are true, that affiant has full authority to sell, license or otherwise dispose of the performing rights in such composition; and the affidavit shall set forth the name, age, occupation and residence of the affiant; and if an agent, the name, occupation and residence of his principal."

Now, Mr. Von Tilzer, having read this Section to you, I ask you now whether you could file the affidavit called for by this section.

A. I would say no. I could give you my reasons too, if

you want them. I don't know if it is necessary.

Q. I did not ask for the reasons.

A. All right. -

Mr. Frohlich: You may cross-examine.

Cross-examination.

By Mr. Bennett:

Q. Mr. Von Tilzer, are you a member of the Board of Directors of ASCAP?

A. I am.

[fol. 486] Q. How long have you been a member of the Board?

A. Ever since 1914, with the exception of the period I spoke of before, a year and nine months.

Q. Are you a member of any committees of ASCAP?

A. I am on the Membership Committee.

Q. Is that the only committee?

A. That is the only one.

Q. That is the committee which passes on applications for membership?

A. That's right.

Q. Now, with regard to the musical compositions which you acquire from composers and authors and which you publish, who is the owner of the copyright of those compositions: you or the composer and author?

A. I always understood that the publisher, unless there is a certain contractual arrangement to the contrary, that the publisher owns the copyright.

Q. From your knowledge acquired during the past 37 years in the music publishing business, would you say that that is substantially true of all music publishing businesses?

A. I should say so, if you take my entire answer, and that is, there are some instances where the riter—

Q. It is substantially true? [fol. 487] A. Yes.

Q. Primarily the publisher owns the copyright?

Mr. Finkelstein: That is not what he testified to.

Mr. Bennett: I am asking the question. Let him answer the question.

Mr. Finkelstein: You just made a statement; you said that primarily the publisher owns the copyright.

Mr. Bennett: I am asking the question. Please permit me to do so. You may object to the question.

Mr. Finkelstein: You just made a statement.

Mr. Bennett: No. The witness is on cross-examination, don't forget that.

Mr. Finkelstein: Go ahead; ask your question, but you just made a statement.

The Witness: Will you please repeat the question.

Q. Primarily that is substantially the case, isn't that so! A. Now, you are asking this question directed to what! You appear to doubt my statement. I don't want to get confused myself, and if you question my veracity that isn't [fol. 488] so pleasant.

Q. The question is that the publisher primarily is the

owner of the copyright.

A. I can speak for ourselves. I would not like to speak for the entire music business; I don't think it is right for me to do so. After all, I am not in their confidence, any more than they know how we run our business. But I can speak for ourselves, and that is that we are the copyright owners of songs that we publish—I would like to retract that on reconsideration; that statement of mine about the publishing business in general, because that is hearsay, and I don't think I have the right to say that.

Q. In 37 years of work in the music publishing business—

A. You get impressions, that is all; I mean, after all, they are not proof, they are not positive proof of that, and I don't know that. A statement to that effect means nothing one way or the other, other than we ourselves, other than the records of our own publications. I would not want to speak for other publishers; I don't have this right.

Q. Mr. Von Tilzer, will you refer to Plaintiffs' Exhibit No. 7 and state whether, from your knowledge of the music publishing business, that that exhibit represents the form [fol. 489] of contract commonly entered into between music

publishers and composers and authors.

A. I will speak for the Broadway Music Corporation. That is the form that we have been using since 1932. It is the form that we have been using since that time. Does that answer your question?

Q. Have you any knowledge as to whether this form is

approved by other music publishers?

A. I think it was at that time; whether they have been using it since then or not I dor't know.

Q. Are you a member of the Music Publishers Protective

Association ?

A. Yes, but I am not on the Board. I don't get up that way very often.

Q. You have testified with regard to the decline in the

sale of sheet music?

A. May I have that again?

Q. You have testified with regard to the decline in the sale of sheet music subsequent to 1923?

A. Yes.

Q. What was your experience in 1939?

A. With sheet music?

Q. Yes.

A. I think it is bad, the same as has been during this [fol. 490] bad period. They have had songs occasionally, songs that we call "free songs," that have done pretty well, but the majority of songs have been way under; and after all, it is the majority of the songs that make the business, not the exceptions.

Q. Have you noticed any improvement in conditions?

A. Not in sales of sheet music.

Q. How about phonograph record royalties?

A. Well, there seems to be a temporary increase right now, do to the slot machines, which we have not enjoyed any particular advantage of; and how permanent it is and how

much of an improvement it will be over any space of time I don't think anyone knows. No business can subsist upon freak gains, particularly a business as hazardous as the music business, of which there is none more hazardous. And with the natural sales of sheet music down to a minimum, due to many reasons, including the one I mentioned before, that of getting the performance free over the air and having our work taken away from us and sold in song sheets from which we get nothing, why, if we didn't have this other form we would be nowheres. I mean there is no necessity of bad reports; the situation is there. It is so obvious and so plain that I don't think anybody can question it.

[fol. 491] Q. I don't think you understood the question.

A. Possibly not. Once your mind travels, after you get

out on a certain track-

Q. Did you have any hits in 1939?

A. No; no new songs.

Q. Do you sell the recording rights for electrical transcriptions and to motion picture producers for the incorporation on sound tracks of motion picture films?

A. We do.

Q. How do you arrive at the price you charge the motion picture producers for the right to record a particular number?

A. Well, it depends upon the way that number is used in the picture. Some are minor uses and some are major uses; it depends on the importance of that number to the picture. There are so many ways of estimating value that it would be hard to pin it down to one thing.

Q. Do you vary it also in accordance with what your opinion is of the value of the particular composition?

A. Yes, I should say so, if that entered into it.

Q. You have ways and means of determining the value!

A. Yes. If the number is a standard number and it is constantly being performed, I should say if it is constantly being broadcast by artists and it has a standard popularity, [fol. 492] I should say that would make that number more valuable than a number that there is no request for. Does that answer your question?

Q. Yes. Referring back to the Membership Committee, of which you testified you were a member, are you a member of that committee as a representative of publishers!

A. That is right.

Q. Are you familiar with the publisher members of

A. I know them all. You mean their businesses?

Q. Do you know how many there are all told?

A. I couldn't say offhand. There are over a hundred to my knowledge; I don't know how many over a hundred it is.

Q. Do you know whether any of those own additional publishing companies or have acquired catalogues of additional publishing companies?

A. Well, some of them are members because they acquire

catalogues, I believe.

Q. From your knowledge of the music publishing business in the United States which you acquired during your 37 years of experience as a Director and member of the Membership Committee of ASCAP, what would you say is the percentage of music publishers of the United States regularly engaged in the publishing business who are [fol. 493] members of ASCAP?

A. Well, that would be difficult, because a great many publishers throughout the United States publish piano pieces and things of that kind and symphonic works.

Q. What percentage would you say of the popular music

publishing business is represented in ASCAP?

A. It would be difficult for me to give you the percentage; I can only give you an idea, by telling you that there are publishers all over the United States in almost every town in the country who publish music, a great many of whom are not in the Society; local publishers socalled.

Q. Would you say these publishers are regularly engaged

in the music publishing business?

A. They think so.

Q. I asked you what you think.

A. Well, I don't know. They have the equipment; they know how to accept a number and to print it up.

Q. Can you name any of those publishers?

A. Not offhand. I got this knowledge, as you say, over a space of 37 years, in a general way. Just to itemize and go into detail without research work, it would be pretty hard to do. It is common knowledge that there are publishers who probably start as music stores, retail music stores, and then they go into the publishing business and [fol. 494] publish numbers.

Q. Would you say that the membership of ASCAP rep-

resents all those regularly engaged in the publishing of

popular music?

A. I would not want to say offhand; I think a great many of the important publishers are in the Society because they find that there is no other way of protecting their interest than through an outlet that will enable them to get this money that we depend upon with which to operate our businesses.

Q. Has the Society ever denied membership to a music

publisher who has made application?

A. If they are recognized, if they are regularly employed in the business and they are permanently engaged, we want them, if they are actively and legitimately engaged. I don't think the Society, speaking personally, wants fly-by-night people who are in the business today and out tomorrow, because that would interfere with our license fees.

Q. Would you say that all those who are permanently engaged in the business, in the music business, or substantially all of them, are members of the Society today!

A. I should say most of them are; I wouldn't say all of them. I wouldn't be prepared to make the statement.

[fol. 495] Q. Substantially?

A. Well--

Mr. Finkelstein: He said most of them.

A. —I think most of them. I know I would not want to be on the outside.

Q. You stated in your direct examination that you could not file the affidavit required by Section 2 of the 1933 Florida statute. Will you amplify that and say why you could not file that affidavit.

A. For one thing, it is voluminous; it requires endless work that would require a great deal of additional expense in our organization, which our income does not provide for It would be difficult because it would be very unhappy work in view of the fact that to my way of thinking there is no object gained to Florida or a publisher in so requesting that kind of information. I should say that we—

Q. Let us refer back to Plaintiffs' Exhibit No. 7, which is a copy of the contract between the Broadway Music Company and Jack Egan and Allen Flynn, as composer and author. The contract covers the number "Be Still, My Heart." Do you know who composed that number?

A. The music, you mean? Jack Egan.

Q. Did you enter the number in the United States Copyright Office and acquire the copyright?

[fol. 496] A. Yes.

Q. Will the records of the Broadway Music Company

show the number of the Copyright Office?

A. Yes.

Q. You have the card from the Copyright Office giving that information?

A. Yes.

Q. Do you still own the copyright on that number, or have you assigned it?

A. We still have it. In fact, if memory serves me, it

cost us quite a bit to retain it.

Q. But, in any event, the records of the Broadway Music Company would show whether you still own that copyright?

A. Yes, we have a copyright card.

Q. Can you state the owner of the performing rights of

that composition?

A. I wouldn't know how to answer that. According to the contract that we have, the publisher owns all the rights; we have all the rights; we have the moving picture and the performances for profit, as well as the sheet music, the mechanicals; we have them all.

Q. Now, Mr. Von Tilzer, having all that information in your records, could you put it on a card or other form

[fol. 497] and execute an affidavit that it was true?

The Witness: What is that question again?

(Pending question read by reporter.)

Q. Well, have you the contract there? Answer the ques-

tion, please.

- A. I wouldn't know how to answer that question. I would not know what it involved, because you asked something in your question that I haven't given you reason to believe that I can in that way.
 - Q. I have asked you whether you had-

A. You said "having."

Q.—the itemized information that the statute of Florida requires be filed with the Secretary of State, or rather with the Comptroller of State. You have stated that you had that information. Now I ask you, could you incorporate that information on a card or form and state in an affidavit that the information is true?

A. Since we have the knowledge of a certain thing, I don't see any physical detriment that would keep us from writing it on a card, excepting were we to do that and put all of our numbers into a catalogue and put to that expense, it would mean additional help, additional cost, which would be a hardship to us to do. I don't know whether—

Mr. Boggs: When you said that you could not make such [fol. 498] an affidavit as was called for by the 1939 Florida statute, what you really meant then, is that you don't want to do it because you think it is burdensome and expensive; is that what you really mean to say? You do not mean to

say that you could not make such an affidavit?

The Witness: Well, the two are somewhat entangled. After all is said and done, a man may start out and attempt to accomplish a certain objective. He may get part of the way and fall down and break a leg. But assuming, because of the fact that we are physically able or financially able to go through with it, I don't know any more than you do just how far I would get with those obstacles put in my way, running my business. After all, we are in the business to publish music. So that answer of mine before stands just as I have given it to you.

By Mr. Bennett:

Q. Mr. Von Tilzer, I am not asking you whether you would like or dislike to file such an affidavit; I am asking you if there is any good reason why you could not prepare such a list.

A. I told you and answered on that point, by saying that I am not sure whether it would be possible or not, because, [fol. 499] situated as we are today, the additional cost, in order to include that system in our business, we might very well find it impossible to go through with it, to accomplish that which you desire.

Q. Would it be an obstacle that would make it impossible

of accomplishment?

A. Yes, the high cost of operation.

Q. Well, you said a while ago, did you not, that you had a substantially complete list of all your musical works?

A. I said most of them, yes.

Q. Now, also, that list would include those that offer any possibilities of commercial profit, wouldn't it, that list that you speak of ?

A. Yes, sir.

Q. Well, wouldn't that list make a substantial compliance with that Florida statute that was read to you by Mr. Frohlich?

Mr. Finkelstein: I object to asking the witness whether a certain thing would be substantial compliance with his question.

Q. You heard Mr. Frohlich read that section of the statute, didn't you?

A. I am just thinking of a point that has come up since in my mind that might very well make the whole question [fol. 500] that you ask very awkward and very destructive to our business. While it is true that we have the songs in our catalogue that there is most demand for, every so often a song comes out of the clear, a song that was not so successful twenty years ago, and then later on, for some reason or other, it becomes in demand. If I were to travel along the lines that you ask or are speaking about I might well forget this part of my catalogue; it might be drying in the vault, because concentrating on the songs that are more prominent, there are many reasons why it is—Here is a case where the State of Florida is trying to run our business for us.

Mr. Bennett: I move to strike out the witness's comment about the State of Florida. It is not responsive to the question.

Q. You seem to have a great deal of difficulty, Mr. Von Tilzer, in telling me why it would be impossible to make such a list. Can you think of any other reasons besides those that you have given so far why it would be impossible for you to file such a list with the Comptroller of the State of Florida?

A. Possibly, after a great deal of thought, I might. I am satisfied to stand on what I have said.

Q. Now, with reference to the cases that you alluded to [fol. 501] just now, you said that sometimes an old song that you had more or less had no sales on for a long time had become popular again: would there be any reason why you could not, in such cases as that, file a supplement to your original list with the Comptroller and add that song?

A. That is not the objection I had about my point. So in having our attention directed away from those possible numbers, we might lose them entirely, just because of con-

centrating on the more prominent numbers. After all, they don't happen by themselves. They happen because you keep shoving songs around in your books, as it were, and you bring a song to somebody's attention and they see the possibilities in it that maybe you don't see yourself, artists and singers who are looking for certain types of material.

Q. In what form do you keep these cards that come from the Copyright Office, showing that you have copyrighted a

piece; how do you file them?

A. They are filed in the filing cases.

Q. A card index filing case?

A. Yes. I don't handle all the forms in our business, so naturally I would not be able to answer just what nook it is in.

Q. But you do have such a compartment? [fol. 502] A. Yes.

Mr. Bennett: That is all.

Redirect examination.

By Mr. Frohlich:

Q. Mr. Von Tilzer, do you recall when I read to you Section 2, subdivisions A and B, that subdivision B provided that "simultaneously with the filing of the list," if you were to make up such a list and file it in Florida, you would have to file an affidavit which shall describe the performing rights to be sold, licensed or otherwise disposed of in that State, and in that affidavit you would have to state that you had full authority to sell, license or otherwise dispose of the performing rights in such composition. Have you now at the present time full authority to sell, license or otherwise dispose of the performing rights in any composition in your catalogue today?

A. No.

Q. Who has that authority?

A. The writers have the joint right in that number.

Q. Who has the ultimate right to sell or license those performing rights today?

A. The American Society of Composers, Authors and Publishers; there is no question about that. They have [fol. 503] the contract with us. It was stupid of me not to get your point, indeed.

Q. Can you tell us offhand how many songs your company has published in the past 37 years?

A. Oh, close to a thousand.

Mr. Frohlich: That is all.

Recross-examination.

By Mr. Bennett:

Q. One further question. In the event that you did not have a contract with the American Society of Composers, Authors and Publishers, would you then have the right license or sell the performing rights?

Mr. Frohlich: I object to that on the ground that it is hypothetical, speculative, incompetent, irrelevant and immaterial; and it assumes a state of facts that is not in existence from all the evidence.

You may answer it.

A. I hate to think what would happen if that were the case.

Q. Would you have the right to sell the public performing rights under your contract, of which Plaintiffs' Exhibit 7 is a sample?

A. I would not want to answer that question unless I [fol. 504] could give you all the garnishings that go with it; it would not be fair to answer yes or no if I were not allowed to state why. I think it would smell to the high heavens even if I were. So if you want me to answer and you will give me the privilege of including my further remarks, why, I would answer it.

Mr. Finkelstein: Answer it any way you want to.

The Witness: If we had no contract with the American Society, naturally we would have the right; there is no question about that, but we would have such an ungodly hard time in collecting our money—with a fine organization like the American Society of Composers, Authors and Publishers, what chance would a small individual who, if it weren't for this small amount of money that we get a year, what chance would we have to go out and collect this money for ourselves? I ask you,—and I can go on that way for the next ten hours.

Mr. Boggs: I move to strike the last part of the witness's answer on the ground that it is not responsive to the question.

By Mr. Frohlich:

Q. Let me ask you this, Mr. Von Tilzer. Do the writers [fol. 505] claim any proprietary interest in the performing rights of the compositions published with you?

A. They do.

Q. Haven't there been controversies for a long time between publishers and writers, including yourself and writers, with respect to who owns those performing rights!

A. Yes.

Q. And haven't those controversies existed for a great many years?

A. They have.

Q. Would you, in the face of the controversies, be prepared to swear under oath in an affidavit that your publishing firm owns completely the rights of public performance in your musical compositions?

Mr. Boggs: I object to the question as leading.

- A. There is that question of moral right and legal right involved in this.
- Q. No. I only ask you if you would be prepared to make an affidavit under oath as to that right.
- A. Well, as it now stands to-day, the rights are enjoyed 50 per cent—
- Q. No. Let us assume that there is no American Society [fol. 506] of Authors, Composers and Publishers.

Mr. Frohlich: I will withdraw that.

A. There are always two sides to the thing.

Q. All right; I will let it go.

Mr. Frohlich: That is all. Mr. Bennett: That is all.

(Witness excused.)

(A recess was taken until 2:30 o'clock p. m.)

After recess.

WALTER S. FISCHER, called as a witness in behalf of the Complainants, having been first duly sworn, did depose and say:

Direct examination.

By Mr. Finkelstein:

Q. What is your name and address?

A. Walter S. Fischer; my home address is Darien, Connecticut.

Q. Are you connected with the firm of Carl Fischer & Company?

A. I am.

[fol. 507] Q. In what capacity?

A. I am president of that firm.

Q. Is that a corporation?
A. That is a corporation.

Q. Under the laws of what State!

A. New York State.

Q. Can you tell me when the Carl Fischer Company first

engaged in business?

A. Well, we became a corporation, I think, in 1923, the end of 1922; prior to that we operated as a partnership, and prior to that my father operated independently.

Q. When was the firm first founded?

A. 1872.

Q. And has it always been in business in the State of ... New York?

A. Yes.

Q. What is the business of Carl Fischer, Inc.?

A. Music publishers, music dealers, music jobbers.

Q. What kind of music do you publish?

A. We publish all kinds of music except the socalled popular music.

Q. Can you tell us whether there is any way of defining

the words "standard music"?

A. No, it is very difficult to define. In the trade, of [fol. 508] course, we know. Sometimes the standard music books contain popular music and sometimes the popular music books contain standard music. But generally speaking, it is the type of music that is referred to as popular;

that is what I referred to when I said we do not publish popular music.

Q. Do you publish all kinds of music other than popular

music?

A. Yes. Our activity is not known as that of a popular publisher.

Q. And would it be fair to say that your activity was known as that of a standard publisher?

A. I think definitely so.

Q. Is Carl Fischer, Inc. a member of the American Society of Composers, Authors and Publishers?

A. It is.

Mr. Finkelstein: It is hereby stipulated that the membership agreement of Carl Fischer, Inc. is the same as Complainants' Exhibits Nos. 2 and 4, and covers the same period of time.

It is further stipulated that the contract between the American Society of Composers, Authors and Publishers and each and every one of its members is identical, and that all present agreements expire on the same date, to wit, [fol. 509] December 1, 1940.

Q. How long has Carl Fischer, Inc. been a member of the Society?

A. I believe since 1924.

Q. And has it from time to time signed five-year agreements with the American Society of Composers, Authors and Publishers?

A. Yes, it has.

Q. The last agreement having been signed when?

A. Five years ago from this next December; it was signed in advance of the expiration; just when it was signed I don't know.

Q. The last agreement became effective January 1, 1936!

A. That is right.

Q. Can you produce a copy of the catalogue issued by Carl Fischer, Inc., a copy of each of the catalogues issued by Carl Fischer, Inc.?

A. Yes.

Mr. Finkelstein: Let the record indicate that the witness has handed to me 11 printed catalogues of Carl Fischer, Inc.

I offer them all in evidence.

Mr. Bennett: No objection.

[fol. 510] The Witness: There are a few additional ones that are not there.

Mr. Boggs: Each catalogue is independent of the other one?

The Witness: That's right,

Mr. Boggs: No objection.

(11 catalogues received in evidence and marked Complainants' Exhibits 8-A to 8-K, inclusive, of this date.)

By Mr. Finkelstein:

- Q. Are Exhibits 8-A to 8-K inclusive current catalogues? A. Yes.
- Q. Can you state the approximate period of time during which they were issued? That is, have they all been issued during the past year or two?
- A. I will have to check as to that; I can't say from memory when they were issued. Some of them are dated. The catalogues are reissued as they are required from time to time.

Q. Now, can you tell us why you have 11 different book-

lets here instead of just one?

- A. Books of music are classified according to the kind of music. If you will notice, we have a catalogue of band [fol. 511] music; we have a catalogue of orchestral music, we have a catalogue of violin and string music, we have a catalogue of sacred music, we have a catalogue of secular music, we have a catalogue of vocal music, we have a catalogue of books—I notice there is a catalogue of woodwind instruments, a catalogue of brass instruments and its related phases.
- Q. Do those catalogues, Exhibits 8-A to 8-K inclusive list all of the compositions copyrighted by Carl Fischer, Inc.?
- A. No, they do not, because there is always new material that is added to the catalogue, which would not go into the catalogue until the catalogue is reprinted. And there also, I notice, there is no plectrum instruments catalogue there. I don't think you will find any catalogue there of harp music, or piano accordion music. There are a few odds and ends that are not represented.

Q. Are all your old numbers listed in the catalogues?

A. Yes. All the numbers that are not eliminated from our catalogues are listed.

Q. What do you mean by numbers being eliminated from

your catalogues f

A. From time to time we eliminate numbers that we con-[fol. 512] sider have no longer value. We take them out of the catalogue as we reissue them.

Q. But you nevertheless continue to own the copyrights of those numbers which are eliminated from your printed

cataloguef

A. Yes, we do, if the copyright has not expired.

Q. So that I understand your testimony to be that you own copyrights on compositions in addition to this list of your printed catalogues; is that correct?

A. That is a correct statement.

Q. Have you any idea of the approximate number of compositions in which you own the copyright?

A. Yes.

Q. Can you state that they are approximate?

A. We have always stated it; we calculated it at one time between 25,000 and 26,000 numbers.

Q. Do you add compositions to your catalogues from

time to time!

A. Regularly, yes.

Q. Approximately how many compositions are added to the catalogues of Carl Fischer, Inc.—and by that I mean how many additional copyrighted compositions?

A. I would say in the last four years it has averaged

more than 300 compositions per year.

[fol. 513] Q. Where is the principal place of business!

A. 56 Cooper Square.

Q. New York City?
A. New York City.

- Q. Does the corporation own that building or does it lease it?
 - A. We lease the building; we lease two buildings. Q. Have you a long term lease on the building?

A. No.

Q. How long a lease do you have?

A. I think the lease has now three years more to run; we just readjusted our lease. We had a 21-year-lease originally, and we have just made readjustment with the owners of the building.

Q. Can you state what the actual rental is?

A. The actual rental, I will have to just figure for a minute.—I think the amount is \$28,000. Now, our lease is on the basis of the corporation paying the upkeep of the building and taxes.

Q. Are the taxes in addition to the \$28,000 you just men-

tioned?

A. Yes.

Q. Do you know approximately what the taxes amount to?

[fel. 514] A. I don't recall the exact figure.

Q. I wonder if I can refresh your recollection. Would that refresh your recollection (handing paper)?

A. I would have to check on the taxes. The taxes have been changed; I don't know the exact figure on the taxes.

Q. Do you know approximately?

A. I know the taxes are about \$12,000, in that neighborhood; but just what the exact figures are I don't know.

Q. Now, prior to the time that Carl Fischer, Inc. became a member of the Society did it receive any income from public performances for profit of any of its works?

A. No.

Mr. Boggs: The question is objected to on the ground that it is immaterial and irrelevant.

Q. Now, can you state in what way you entered into agreements for the publication of copyrights or how you

secure the manuscript?

A. Why, we do so in a number of ways. We enter into a royalty contract; we buy material outright; we also have a staff that is employed; we also will buy copyrights that have been published by others.

Q. Do you represent any foreign publishers in the United States?

A. We do, we represent two important catalogues, the [fol. 515] Oxford University Press, which is an English firm, and Patterson Publications, and a few individual publications or compositions published by a great many publishers.

Q. Now, with respect to those compositions, by whom is

the copyright owned?

A. In some cases the copyright is assigned to us, and in some cases, for instance, the Oxford University Press has the copyright. The same is true of Patterson.

Q. And you have the publication rights for the United States with respect to those works; is that correct?

A. That is correct. We have both printing rights and the

sole agency rights.

Q. Now, what practice do you follow in copyrighting the composition where you receive the manuscript from the author?

A. The practice?

Q. Are you familiar with the copyright practice?

A. Very familiar; depending upon the type of manuscript, it goes to one of our editors who has to prepare the manuscript, see that it is in proper form for publication. It is then engraved, proofs are read, then it is printed. After it is printed it is copyrighted, that's all. The copyright is registered, then it is placed on sale. We follow the general practice in the standard field of releasing monthly [fol. 516] to dealers our current new issues.

Q. Now, does each and every composition have a stamp on the copy of it, a copyright notice that indicates that Carl

Fischer, Inc. is the owner of that copyright?

A. Those that are copyrighted, yes.

Q. And no composition that is copyrighted by you ever goes out without that copyright notice?

A. That is correct.

Q. Now, under your practice with authors other than your employees, do you agree to compensate them on the basis of payment of certain royalties, as a rule?

A. Yes.

Q. And do you have any provision for royalties with

respect to mechanical recordings?

A. We have provisions with respect to mechanical recordings in all of our new contracts with respect to synchronization rights.

Q. Can you explain what the synchronization right is?

A. It is very difficult. A synchronization right is a combination of two rights. It does not exist in copyright law. It is pretty difficult to define, except that we understand what it means in the trade.

Q. Now, when a socalled synchronization right is granted to a motion picture company, what right does the motion [fol. 517] picture company get by that grant?

A. He really gets the right to record that composition. If the performance is given under the ASCAP license he

gets the right to use the music for synchronization with the motion picture; that is the basis right he gets.

Q. Is that because the performing rights have been assigned to the Society?

A. Yes.

Q. And the right given to the motion picture company is

the right merely to record it on the film?

A. That's right. They get that right; the right includes the right to rearrange it for their purposes, because generally they cannot use it in the published form.

- Q. A composition that you receive for the synchronization right is computed on the basis of the value to the motion picture company of the right to record that on the motion picture film?
 - A. That is right.
- Q. Now, where the copyright expires in any composition that you have published and the author is dead, at the expiration of the first term, do you in such cases negotiate with the author's widow or children, or whoever may own the renewal right?

A. Yes.

[fol. 518] Q. For the purpose of acquiring such rights as you may wish to acquire in those compositions?

A. That has been our practice.

Q. Does that happen frequently?

A. It happens very frequently.

Q. Where you acquire any of these renewal rights, do you often pay advanced royalties?

A. Rarely pay advance royalties, but generally we agree to pay royalties on the renewal rights that come up on compositions that have been assigned to us. In those cases we generally make a royalty agreement, sometimes we make an outright purchase of the renewal rights, depending upon the nature and type of composition and the desire of the owner of the renewal rights.

Q. Have any of your works been part of stage shows?

A. Yes.

Q. Socalled dramatico-musical works?

A. Yes.

Q. And have some of them been incorporated in motion pictures in a way other than mere background music?

A. Yes.

Q. Forming a substantial part of the picture?

A. Yes.

Q. Now, with respect to those pictures, do you find it [fol. 519] necessary to restrict the use of those compositions from time to time?

A. We haven't found it necessary so to do, no.

Q. Did you publish "Shadrach"?

A. Yes. That was put on the restricted list. I don't think it is on the restricted list now. The reason that it was put on the restricted list was because MacGimsey, the composer, did not wish to have the song introduced except under certain auspices. There is a standard song that became popular.

Q. Now, when a song is restricted, is it necessary to examine the nature of the performances to be given before determining whether the specific permission will be given for that

particular performance!

A. Yes. This particular restriction that you referred to was one that MacGimsey asked us to impose, and he became the arbiter as to whether or not the restriction was to be released with respect to the artists who wished to perform this particular song.

Q. Has that happened in many other instances?

A. Yes, as compared with the number of works that we publish, in isolated instances only.

Q. But where the author makes such a request, you accede to the author's request?

[fol. 520] A. Yes.

Q. I think you testified with respect to the synchronization right that you did not receive from the motion picture company any compensation for the performance in the theatre itself?

A. That's right.

Q. Do you receive that composition in some way? A. We receive it because of membership in ASCAP.

Q. Can you explain how that bappens?

A. Well, the motion picture exhibitor is licensed by ASCAP, and under its license it has the unlimited use of the repertoire of ASCAP; the money collected by ASCAP is evenly distributed to the publisher members as well as the writer members. It is not exactly the fact; it is the motion picture theatre that has the license, not the exhibitor. If you mean by exhibitor the theatre, then the answer is

correct; if you mean by producer of the picture as exhibitor, then the answer is not correct.

Q. The exhibitor is the man who owns the theatre?

A. If you mean by exhibitor the man who owns the theatre, the answer is correct.

Q. Have you a great many of your compositions recorded

on phonograph records?

A. Do you mean have many of our compositions been recorded on phonograph records?

[fol. 521] Q. When the compositions are recorded, does the manufacturer receive from you any performing right or any right to license performances?

A. No.

Q. What does he acquire from you?

A. The right to mechanical recording.

Q. And once you grant a right to one manufacturer, do other manufacturers record that work under the compulsory license position?

A. They have a right to, but as a matter of practice they rarely do so.

Q. Is that just in the standard field?

A. I don't know what the practice would be in the popular field.

Q. Do you know what royalties are generally paid by the manufacturer on manufactured records?

A. Well, the royalty under the Act is two cents; there is a royalty of two cents on every record manufactured, but most agreements are made with some sort of a provision, either of reduced royalty, if the record is sold at a certain price, or on the basis of sales rather than manufactured.

Q. When you say reduced royalty, you mean royalty [fol. 522] lower than two cents a record?

A. That's right; royalty less than the statutory fee, which is two cents.

Q. In other words, you have found that the statutory fee is the maximum fee?

A. It is the maximum.

Q. That any manufacturer pays?

A. Yes.

Q. Now, is there any way that you could compel the manufacturer of the record to put on the record a price to cover the performance of the record?

Mr. Boggs: The question is objected to as incompetent, irrelevant and immaterial, and dealing with sections of the statute which have been repealed and in which the State of Florida has announced its intention not to enforce.

The Witness: Will you read the question.

(Pending question read.)

A. I don't know of any such.

Q. Would you be willing to have the manufacturer of the record—

Mr. Boggs: The same objection.

Q.—fix a price for performance, or collect performance fees in your behalf?
[fol. 523] A. No, sir.

Q. Does the record manufacturer act as your agent in any way at all?

A. No.

Q. Are copies of your compositions sold in the State of Florida?

A. Yes.

Q. Have you an agent there?

A. We have dealers—You mean by an agent—

Q. You have no agent in the technical sense, no agent of the corporation?

A. No.

Q. Can you describe the manner in which copies of your

compositions reach the public?

A. They reach them in several ways there. They are either distributed through the jobber to the dealer, and the dealer in turn to the public, or distributed by us to the dealer, and the dealer in turn sends them out to the public; and we also sell direct by mail.

Q. Do you sell directly to any dealers in the State of

Florida!

A. I don't know who the dealers in Florida are at this moment, but we sell to all the dealers that may be in good financial standing.

[fol. 524] Q. What do you mean by a dealer? Is that the

store that sells, or is the dealer somebody else?

A. The dealer, as applied to our policy, would be a music store that carries a representative stock of our publications.

Q. Do you also sell to jobbers?

A. We also sell to recognized music jobbers,

Q. And they in turn sell to dealers?

A. They in turn sell to the dealers.

Q. Do you have any office in the State of Florida?

A. No.

Q. Do you know whether your works have been performed in the State of Florida?

A. Yes.

Q. Have they been so performed?

A. Yes.

Q. Have your works been performed over the national network of the National Broadcasting Company and the Columbia Broadcasting System and the Mutual Broadcasting System?

A. Yes.

Q. Over all of them?

A. Yes.

[fol. 525] compositions sold in the State of Florida a price to be charged for the use or rendition of that copyrighted work for all purposes in the State of Florida?

Mr. Boggs: The question is objected to as irrelevant and immaterial, and because it deals with a portion of the statute that has been repealed, the sections of which the State of Florida has disclaimed any intention of enforcing.

The Witness: Shall I answer it? Mr. Finkelstein: Yes.

A. It would be possible but most impractical. I don't see how you could find enough space on a piece of music to cover all the various possibilities that would enter into fixing a price for the performance; there would be so many different types of performances, the nature and character of which would enter into a price that would be fixed, it would be impossible from a practical standpoint to do it.

Q. Can you state some of the factors that would have to be taken into consideration in fixing a price to cover the performances of the work?

A. First off, you would have to consider the nature and character of the work, its life, its importance as far as the composer is concerned, the nature of the performance that [fol. 526] would be given. For instance, we have in the

case that I cited before, of MacGimsey, the reason he restricted the work, because he wanted to safeguard the type of performance. Especially in the standard field, where there are certain artistic standards that have to be adhered to, it becomes important that a work be introduced under proper auspices, because unless it is so done you might ruin the reputation of the composer and of the work; you would have to consider the station, its potential listeners, the time of day, whether there was a sponsor connected with it or whether there was no sponsor, and there are endless ramifications that would have to be taken into consideration.

Q. And a separate price would have to be fixed, depending upon the particular factors that were taken into consideration?

A. Definitely.

Q. Would all of these separate factors have to be taken into consideration with respect to the performance of 367 establishments now licensed by the Society in the State of Florida?

A. If there are 367 licenses in the State of Florida, which I don't know, each one of those would have to be analyzed as to all the factors that would be involved.

[fol. 527] Q. Now, at the time you sell copies of your compositions in the State of Florida, or at the time you first issue copies of the compositions for purposes of distribution in the United States, including the State of Florida, can you fix a price to be charged for the use and rendition of the copyrighted musical compositions in the State of Florida?

Mr. Boggs: That is objected to as immaterial and irrelevant and as dealing with a section of the statute which has been repealed and which the State of Florida has announced its intention not to enforce.

A. Well, of course, upon publication, no one knows what the value of that composition, the potential value of that composition, is going to be. Therefore, it would have to be—it would be difficult if not impossible at the outset to fix equitable fees.

Q. Does the value of a particular composition for purposes of public performance change from time to time!

A. Definitely,

Q. Can you state some of the factors affecting such a

change?

A. Well, let me give you an instance. We published many years ago a composition which became known as "The Stein Song." For years that composition in our catalogue had [fol. 528] no real value. When radio evolved, we decided to slightly rewrite the song and to feature it. It became of tremendous value. And that same thing applies to all music. For instance, we published 50 to 60 compositions by a man, we will say, Leopold Godowsky; of those 50 or 60 numbers, eventually four or five will become of real value, the others are of little or no value.

Q. Does it often take years before a composition in the

standard field is launched successfully?

A. It generally takes time; it is in the nature of the business; it takes time to develop serious music.

Q. Is it necessary in that connection to be careful about the particular artist who launches the particular work?

A. It is the very essence of it. If you get a particular artist to launch your work, you are almost sure of success.

Q. Would the amount that you would charge for a particular performance depend to some extent upon the artist

giving the performance?

A. It depends on the artist giving the performance. It would also depend upon the artist, his popularity or his work as to future performing fee, to the future value of the performing fee; do you understand?

[fol. 529] Q. I think I do.

A. I just wonder if the record is clear.

Q. Do you mean that the performance by a particular artist at a particular time may at that moment enhance the value of the work for future purposes?

A. Definitely, yes. It is very necessary in our business to try to have compositions introduced under the proper

auspices.

Q. Now, if you were to attempt to fix a price, or a schedule of prices for the performances of your works in the State of Florida, how would you go about attempting to secure the information necessary to even attempt to fix such prices?

A. Frankly, I don't know.

Q. Do you have information in your possession now that would enable you to do that for the 367 users of the State of Florida?

A. No, because we have no such information.

Q. Would you be able to make a personal investigation yourself in the State of Florida to determine the potential users of your composition and what prices should be fixed?

A. I suppose if I were to devote my entire time and attention to it for a number of months, I might be able to

[fol. 530] accomplish it.

Q. What as a practical matter would you have to do!

A. As a practical matter, I presume we would have to get someone who is familiar with our type of music to be on the spot and keep in touch with the situation; you have to have probably a stenographer and maybe another assistant. I don't know what the problem would be. It would be a new problem.

Q. What salary would you have to pay for the type of person you would employ for that purpose in the State of

Florida?

Mr. Boggs: The question is objected to as calling for a speculative answer; also because the Florida statute does not require such actions to be taken on the part of copyright owners.

Mr. Finkelstein: You may answer it.

A. I should think for that type of man we would have to pay \$75 to \$100 a week; I don't know what the rents are in Florida, I have no idea. I suppose a stenographer would have to be paid the prevailing wages in Florida, \$25 a week maybe; I don't know.

Q. Would you have to set up a filing system?

A. You would have to have an office, equipment, filing system, card system.

[fol. 531] Q. You have been engaged for a great many years in ascertaining copyright information in the field of publishing music. Have you any idea what it would cost to set up the system necessary to administer your rights in the State of Florida?

Mr. Boggs: Same objection.

A. It would cost a very considerable sum of money, how much I would be unable to state without making an analysis of it. I mean, that is a problem. My gosh, you just can't figure all the ramifications of a problem like that.

Q. Would you consider it necessary if there were no blanket licenses issued in the State of Flor da to have in-

3

vestigations made of the performances of your works in that State?

A. We would definitely have to check them; and that would be a man's size job in itself, the checking of performances—I don't know how you could attempt to check them with one man. I presume performances go on simultaneously; you would have to have more than one person looking in to do the checking; and if you are going to check over the year you would have to have people who know music, who would have to recognize the compositions that are played on the air. The titles are not announced, they are not often announced. It would require a very high type of musical knowledge.

[fol. 532] Q. What salary would you have to pay a person

so qualified?

Mr. Boggs: Same objection.

A. You would have to pay him plenty.

Q. Now, you have been employing people that are skilled in that field of endeavor, haven't you?

A. Yes, we have.

Q. Have you any idea what you would have to pay such a person?

A. \$75 to \$100 a week. I don't think you could get them

any cheaper.

Q. Would you have to establish the type of each and every user in the State of Florida?

A. You would have to have a regular organization to

maintain your contacts.

Q. Would that require a complete force of men in the State?

Mr. Boggs: The question is objected to on the grounds heretofore given to similar questions, and on the further ground that it is obvious that counsel is leading the witness.

The Witness: Shall I answer!

Mr. Finkelstein: Yes.

A. Frankly, I don't know what the problem would be. [fol. 533] I can say that the problem would be a very big problem; how big it is going to be, whether it is even a possible problem, whether it is a problem that can be solved, I doubt very much, and I don't know whether the returns

that we might get out of the State of Florida would justify an organization to control these rights, to check them.

Q. Is it your testimony that in order to attempt to comply with the statute you would as a minimum be compelled to employ two people and to expend the sums of money that you have already mentioned?

Mr. Boggs: The question is objected to because it seems that the witness is familiar with the statute, and no foundation has been laid therefor.

Mr. Finkelstein: You say the witness is familiar or seems

to be familiar?

Mr. Boggs: I say the witness seems familiar with the statute.

Mr. Finkelstein: Can we get an answer to that question then?

The Witness: What was the question? It was objected to, I know.

(Pending question read by the reporter.)

A. My answer would be yes.

Q. Assuming that you fix a price for its use, on the [fol. 534] physical copy of the composition sold in the State of Florida, will you have any means of ascertaining whether the performances were given from compositions purchased in the State of Florida or from compositions purchased elsewhere?

Mr. Boggs: The question is objected to as immaterial and irrelevant.

A. You would have to have access to the actual studio from which the performance emanates to determine that, of course.

Q. Would you have to employ someone for that purpose!

A. Someone would have to have the access.

Q. And the same thing that applies to radio studios also applies to dance halls in the State of Florida?

A. Definitely, yes.

Q. And all other users in that State?

A. Yes.

Q. Do you make a practise at the present time of affixing to your sheet music a price that covers the right to make any use of the works other than those uses listed as uses; that is, in the home, that do not amount to public performance for profit?

A. The only price that is affixed to our music is the price at which it is sold to the general public.

[fol. 535] Q. And that does not give any other right to the purchaser of that sheet of music?

A. It gives no other right to the purchaser.

Q. Now, if rights were being licensed on the basis required by this statute, will you be compelled to employ a lawyer in the State of Florida to protect your rights?

Mr. Boggs: The question is objected to, because it seems that the witness is familiar with the contents and provisions of the Florida statute, as to which no showing has been made.

Q. Well, the answer would be you don't know?

A. How could I tell that in advance? You would have to have an attorney or a staff of attorneys. I can't possibly tell you. Experience alone would determine that.

Q. Do you have the means at the present time for redressing any infringement of your works in the State of

Florida?

A. Yes, through ASCAP.

Q. Now, if you were unable to do that through the American Society of Composers, Authors and Publishers, how would you do it?

A. We would have to attempt to do it through our own

efforts.

Q. Those efforts would include the employment of attor-[fol. 536] neys, in your judgment?

A. Well, obviously, they would.

Mr. Boggs: Same objection.

Q. Would you have to pay the expenses of your staff in the State of Florida?

A. Who else would pay them?

Q. Have you any idea of how much an expense allowance you would have to give for the administration of the investigation of your rights in the entire State of Florida?

Mr. Boggs: The question is objected to because the witness already testified that he is not competent to make such a calculation at the present time.

A. I would not be able to make a definite calculation; how could I?

Q. Assuming that there there are 367 places scattered throughout the State of Florida performing your works, can you state what would be the very minimum of expense incidental to protecting and enforcing your rights in the State under the statute?

Mr. Boggs: Same objection,

A. I couldn't give any definite figure. It would be a substantial amount, of course, but how much it would involve I couldn't say.

Q. Have you any means now of knowing what price you

[fol. 537] would charge for use by television.

A. No.

Q. Is the right of performance by means of television one of those rights that will change from time to time?

A. I don't understand your question.

Q. The right to perform by means of television, are there factors that would make the value of the television right change from time to time?

A. You mean as to the

Q. Apart from all the other factors.

A. You mean as to the fee for television?

Q. Yes.

A. Licenses for television, definitely.

Q. What are those factors?

A. The number of people who are going to be in a position to use television, the coverage of the particular station; the location of the station; all these other factors that come into the whole field of television. It is a new field; I know very little about television.

Q. I suppose the main factor would be the development

of the art itself?

A. Definitely; the commerci-bility of it. I don't think it is commercially on a commercial basis, yet it mey be; I don't know anything about television except by hearsay. [fol. 538] I have never seen any—what do you call it—televised performances?

Q. Is there any way then at this time to determine what amount ought to be charged for television performances!

A. None that I know of.

Q. Can you tell how much the Carl Fischer Company has received annually from the Society, on an average for the past five years?

A. About \$100,000?

Q. Do you expect to renew your contract with the Society when it expires?

Mr. Boggs: The question is objected to as calling for a speculative answer.

A. We have renewed it.

Q. Can you tell us the value of your contract with the American Society at this time?

Mr. Boggs: The question is objected to, no proper foundation having been laid.

A. Weli, I would say that the value of our contract—Do you mean on the basis of that which we have received?

Q. That is right, what you have received in the past, what you might expect to receive in the future, based upon past performances.

A. I would say their anticipation is considerably more. [fol. 539] Q. Can you place a value on your contract with the Society?

Mr. Boggs: Same objection.

A. Yes, I can place a value on it. I think a very conservative value would be \$175,000 annually.

Mr. Bennett: How much did you say? The Witness: \$175,000.

Q. If you were unable to receive the income which you now receive from the American Society, how would that affect the business of Carl Fischer?

A. It would affect it very seriously, because, as a matter of fact, we are now operating, as far as the sale of sheet music goes, at a loss.

Q. Has the situation with respect to the sale of sheet music changed since the adoption of radio in 1922?

A. Oh, definitely; it has changed the whole trend of music.

Q. Can you tell us in what respect it has changed?

A. It has lessened the sale of music. Just see what has happened to professional musicians; it has restricted the number of performances, it is confined now to a very few performances, to a very large group of listeners. We don't find pianos in the home. You find people turning to their radios instead of to a member of the family to provide the

[fol. 540] music in the home. It has taken away the incentive for self-expression of music very largely. It has developed, it is true, a great mass of listeners that acquire a knowledge of music, but as far as the individual performer goes, it has taken away his incentive. You just turn to your piano teachers and violin teachers and see what their experience is. Take the professional field: see how few professional musicians are engaged today as compared with a decade or two decades ago.

Q. Is the value of the performing rights a very sub-

stantial asset in your business?

A. It is the whole life blood of the business today.

Q. Could your business survive without licensing performances for public profit?

A. No, not in its present setup.

Q. Now, if you had to establish an agency in each State for the administration of your right of public performance for profit, could you continue in business?

Mr. Boggs: The question is objected to en the ground that it calls for a speculative answer.

A. It depends on a great many other factors whether we could continue in business or not. After all, we are not going to set up an organization in Florida because the Florida performing rights are not going to put us out of [fol. 541] business in the other States of the Union.

Q. My question was if you had it in all the States.

A. If we had it in all the States we would have to re-

organize our entire method of doing business.

Q. Do you have the facilities for licensing your own works separately in the 30,000 establishments throughout the United States using your compositions?

A. We have no facilities for licensing at all at the present

time.

Q. And taking into consideration the amount received

from licenses for public performance for profit?

A. Unless we could substantially increase our revenue we could not possibly set it up on the basis of our present revenues; it just could not be done, in my opinion. Of course, that is a question that would have to be carefully analyzed and studied. I mean, I can have an opinion on it, but I don't know until I get down to facts how I could substantiate any opinion; I would have to have figures to go bby. It is obvious if we are going to operate all the States of

the Union, either from offices there or from a central office in New York, we would have to have quite an organization. Now, what such an organization would cost I have no idea; it would be a very substantial sum, it is obvious, but how much I don't know.

[fol. 542] Q. Now, confining your answer to the State of Florida, could you administer your rights for the public performance for profit singly, licensing the separate rights for the public performance for profit for each separate use

in each establishment in the State of Florida?

A. I presume as a theoretical matter it could be done; as a practical matter I think you would have to get so much more money than they get now that you could not be very hopeful of accomplishing it. Those are questions that would have to be carefully analyzed. It is pretty difficult to give you figures based on anything.

Q. Is a good deal of your music sold to music teachers?

A. Tes.

Q. And educators?

A. Yes.

Q. And schools?

A. Yes.

Q. And colleges?

A. Yes.

Q. If a single price were established for copies of your music that included all possible uses that might be made for public performance for profit, how would that affect the sales to people who are entitled to use the works for educational purposes?

[fol. 543] Mr. Boggs: The question is objected to on the ground that it is immaterial and irrelevant and deals with a phase of the statute which has been repealed and as to which the State of Florida has disclaimed any intention to enforce.

A. Well, in my opinion, you could not raise the price of educational music to cover performing rights without killing that phase of the business.

Q. I will call your attention to Section 2 of the Florida law, enacted in 1939, House Bill 1103, Senate Bill 635, which reads as follows:

"Section 2. It shall be unlawful for any person to sell, license the use of, or in any manner whatsoever dispose of,

in this state, the performing rights in or to any music composition or dramatico-musical composition, which he been copyrighted and is the subject of a valid existing copright, under the laws of the United States, or to collect an compensation on account of any such sale, license, or other disposition, unless such person:

- "(a) Shall first have filed with the Comptroller on form prescribed by the Comptroller a list describing each su musical composition and dramatico-musical composition the performing rights in which said person intends to se [fol. 544] license or otherwise dispose of in this state, whi description shall include the following: The name and tit of the copyrighted composition, the date of the copyright the number or other identifying symbol given thereto in t United States copyright office, the name of the author, t name of the publisher, the name of the present owner of t copyright to said composition, and the name of the prese owner of the performing rights thereto. Additional lists such copyrighted compositions may be filed by any su person from time to time, and shall be subject to all the pr visions of this Act. A filing fee of two cents a compositi shall be required by the Comptroller for filing any list und this Act.
- "(b) Shall simultaneously file an affidavit which she describe the performance rights to be sold, licensed or otherwise disposed of and shall state that the compositions listed are copyrighted under the laws of the United State that the facts contained in the list to which said affidavitelates are true, that affiant has full authority to sell, cense or otherwise dispose of the performing rights in su composition; and the affidavit shall set forth the name, as [fol. 545] occupation and residence of the affiant; and if agent, the name, age, occupation and residence of principal."
 - Q. Could you file such a list in the State of Florida?

Mr. Boggs: The question is objected to as being too vag and general; the section of the statute just read to the w ness embodies a number of separate actions, whereas t witness, under the present question, is permitted to gi only one answer with regard to all of them. Q. You heard that section read?

A. Of course, it would be possible to follow the regulations there. It would involve in our case thousands of compositions. Then it becomes a problem of how you could physically carry out the provisions. This compilation of catalogues, such as these, is a job in itself. Now, when I have to file with respect to each one of these an affidavit, God knows how it could be done in our case. And as I understood you, we would have to file an affidavit with respect to each composition.

Q. You have to file an affidavit and state with respect to each composition that you have full authority to sell, license or otherwise dispose of the performing rights in the

composition.

[fol. 546] A. That was with respect to each composition?

Q. The affidavit-yes.

A. Yes, that could be done.

Q. Does Carl Fischer, Inc. at this time have the perform-

ing rights in any of its compositions?

A. In any of its compositions? Yes.—I want to change that. At the present time, no. Now I see what you are leading to. At the present time we don't own or control our performing rights. They are possessed in ASCAP under a contract which expires the end of this year and, as we take or renew our contract for another period of ten years, we are not the owners of these performing rights.

.Q. Can you estimate the cost of attempting to file a list containing the copyrights in the catalogues of Carl Fischer,

Inc. I believe you said there were about 26,000?

A. Yes.

er

ıll

r-

Q. Giving all of the data required in Section 27

A. I could not give any definite estimate as to that. I do not know what it would cost.

Q. I call your attention to section 4-A-

A. Because, you see, in our case, we don't claim that we have the performing rights to all of the compositions in these catalogues. There are compositions in our catalogues [fol. 547] that are in public domain, compositions where the copyright has expired; compositions that are not copyrighted.

Q. You would have to have a search made as to the status

of each?

A. You would have to make an investigation that would require certainly a lot of research work.

- Q. You would have to engage somebody to make that search?
- A. It would not be made of itself. Someone would have to do it.
- Q. Well, you would have to consult counsel to determine whether in specific cases you had the right?

Mr. Boggs: The question is objected to as conjectural and speculative.

A. There are compositions, of course, in everyone's catalogue where there are questions of that kind that are not clearly set forth in agreements. For instance, we have a number of compositions where we have certain rights of republication, in arrangements made on foreign copyrights, the status of these performing rights with respect to these numbers is not very clearly established in our agreements.

Q. Will you be able, with respect to these compositions, to state under oath that you have full authority to sell, license or otherwise dispose of the performing rights in such

[fol. 548] compositions?

A. Well, if there is a question I would not do it under oath. I would do it in cases where I was certain.

Q. Would there be any practical way of licensing those compositions?

A. No.

Q. If the requirements of the statute had to be met?

A. No. I mean, where the performing right is involved, as it is in many instances in our catalogues, it would be pretty hard to clear the title; certainly, we would not make any affidavit if we were in doubt. Now, probably some cases could only be determined finally by litigation.

Q. Are you willing to have your compositions that are broadcast outside of the State of Florida and under license from you rebroadcast in the State of Florida without the payment of any performance fee by users in the State of

Florida ?

A. No, we would not be willing.

Q. Are you willing to have broadcasts or other performances made in the State of Florida from phonograph records by transcriptions brought into that State from outside the State without payment of a performance fee to you?

A. Definitely not.

Q. Would you be willing to have a motion picture in [fol. 549] Florida give performances by means of motion

pictures imported into the State of Florida from outside of the State without payment of any license fee with respect to your copyrighted compositions?

A. No.

Q. I call your attention to Section 4-A of the 1939 Florida law, which reads as follows:

O"Section 4-A. It shall be unlawful for two or more owners of the copyrights of musical compositions or dramaticomusical compositions to associate or combine together in any manner, directly or indirectly, for the purpose of issuing blanket licenses for the public performance for profit of their compositions upon a blanket royalty or fee covering more than one, or all, of such compositions owned or controlled by the members of such association unless each individual copyright owner included in such association, or such association in behalf of each individual copyright owner, also shall make available to each user of such compositions within the state, at the option of the user, the right to perform publicly for profit each such copyrighted musical composition owned by him or it at a price established for each separate performance of each such composition. To this end there shall be filed with the Comptroller, [fol. 550] either as a part of the list required by Section 2 hereof or as a separate document by such copyright owner, or by such association in behalf of such owner, a schedule of prices for the performing rights to each separate performance for profit of each such composition contained in such list, together with an affidavit of the copyright owner of such compositions that the price so stated has been determined by such copyright owner acting for himself and not either directly or indirectly in concert or by agreement with the owner or owners of any other copyrights. Such schedule of prices may contain reasonable classifications determined by use and function, or either, of the users of said compositions, with separate price for each classification, provided that there is equal treatment of all persons within each classification and that there is no unreasonable discrimination between classifications. Any copyright owner may at his election fix one price which shall be applicable to each rendition of each of such compositions owned by him except to the extent that he elects to name specific compositions and to fix other prices for each rendition thereof, and said prices shall remain in force

2 .

and effect until a new schedule of prices with respect to [fol. 551] the performing rights to such compositions has been similarly filed in the office of the Comptroller, at any time, at the election of such owner changes in prices to become effective seven days from the date of filing thereof. The schedule of prices provided for herein shall be made available by the Comptroller to all persons for examination and the taking of copies, and may be published by him in the same manner as provided in Section 3 hereof."

Now, in order to make works available at a price established for each separate performance, would it be necessary for you to do the things that you mentioned before in investigating the users in the State of Florida, and so forth?

A. Correct. You have that same problem of checking, with all the expense that is involved in that operation, and

therefore we would be unwilling to do it.

Q. Would it be possible for you as a practical matter to issue licenses on the basis specified in Section 4-A which I just read to you?

A. As a practical matter, no.

Q. What are the practical impediments to such a basis

for licensing?

A. It always involves all the policing that has to be [fol. 552] done in the operation of it, and the expense that would be incumbent upon us in order to control the situation, the checking of the program and these other things that enter into this. It would be just impossible for an individual.

Q. Are those things necessary with the blanket system of

A. No, because under a blanket system of licensing they have unlimited rights to your repertroire.

Q. Is it necessary to investigate the individual?

A. Yes.

Mr. Finkelstein: You may examine.

Cross-examination.

By Mr. Boggs:

Q. Mr. Fischer, I hand you Plaintiffs' Exhibit No. 7, which is entitled, "Standard Uniform Popular Songwriter's Contract," and hears the notation in the upper left-hand

corner, "Copyrighted 1933 by the American Society of Composers, Authors and Publishers." Will you examine that document and tell me whether that is a sample of the kind of contract that you make with your music composers and authors?

A. No, it is not; we do not use this contract.

Q. You do not use that?

[fol. 553] A. No, we have our own contract.

Q. You don't have one with you?

A. No, but I can get one.

Q. I will be glad if you would send one over at your convenience.

A. I will send one tomorrow.

Q. You said, I believe, that you have recently signed up a new ten-year contract with the American Society of Composers, Authors and Publishers?

A. Yes.

Q. How long ago was that?

A. That we signed it?

Q. Yes.

A. Oh, I should say, September or October of last year.

Q. 19391

A. 1939, yes.

Q. Well, is that contract executed for a ten-year term identical with the old contract?

A. Yes.

Mr. Finkelstein: It commences at the expiration of the old one.

The Witness: It is a renewal of our old agreement.

- Q. Do you know if other ASCAP members have also exe-[fol. 554] cuted renewals, or does that come to your attention?
- A. Yes, I know that they have, I think the majority of them have.

Q. Are you on the Board of ASCAP?

A. I am.

Q. And do you serve on any of its committees?

A. I do.

Q. What committees?

A. I am on the Foreign Relations Committee and on the Administration Committee.

Q. How long have you been on the Board?

A. Since 1925 or 1924.

Q. In your direct testimony you spoke about the necessity in standard music, such as yours, of investigating the particular artists that were going to perform. Now, when you spoke about that, were you speaking of branches of your business that are not handled through ASCAP?

A. No.

Q. In other words, you are speaking now of the rights

you handle yourself; is that it?

A. No. I was speaking in general about specific cases that come up in connection with the "Shadrach" question, as to why that number was restricted; that particular num-[fol. 555] ber was restricted because MacGimsey was very anxious that that song should be introduced by a certain type of singer.

Q. But that piece of music goes to ASCAP, doesn't it?

A. Oh, yes, under our contract with ASCAP we always have that right to restrict in good faith.

Q. Well, practically, how is that matter of restrictions of that kind handled, remaining always with the author or

composer?

A. In our particular case, our restrictions have been very few. For instance, I might give you an instance: We are now publishing an orchestration to a violin suite by Ernest Bloch, called "Bal Schum Suite"; now, these numbers exist now for violin and piano and were published by us several years ago. In their new form with orchestra accompaniment, at the suggestion of Ernest Bloch, we were able to get a well known violinist by the name of Sgetti to introduce these with certain philharmonic engagements which he had. Now we are going to restrict those numbers pending his opportunity to introduce these compositions with their orchestral form. We are going to restrict them because of artistic reasons.

Q. How does the user know about that? Suppose somebody wants to perform that piece of music and he doesn't [fol. 556] know that you have a restriction on it?

A. We advise ASCAP to place these numbers on the re-

stricted list and they in turn notify the licensees.

Q. They notify all the licensees?

A. Yes. The restriction must be effective until notice has

been served, naturally.

Q. Well, in that case, such as you gave the instance of, would that mean that nobody else was to play it at all until this particular performer had introduced it?

0

A. This group of performances by this man has taken place, but I would like to make it clear that considering the repertoire that is included in ASCAP from our source, those restrictions are small in percentage,—I mean, occasional restrictions.

By Mr. Bennett:

Q. You stated in your direct testimony that you sold the right to record individual compositions to motion picture companies. How do you arrive at the price that you charge?

A. It depends upon the use that is being made and the type composition that is involved.

Q. Do you base it in part on what you think the value of

the particular composition is?

- A. We base it in part upon the character of the music, [fol. 557] which determines its value. Now, for instance, that ground music which is particularly used from our catalogue, has more or less a definite value only. On the other hand, there are other compositions in our catalogue which become very valuable to motion picture people for use in a certain way; we don't measure that except when we know all the particulars of the use actually that it is going to be put to.
- Q. Do you determine those prices yourself—I don't mean you personally—I mean does Carl Fischer, Inc. determine those prices?

A. Oh, yes.

Q. Is that more or less general with Carl Fischer, Inc.? Are they making such arrangements from time to time and continuously?

A. Oh, yes.

Q. Now, you stated in regard to recording that a two cent recording fee stated in the Copyright Act was the maximum amount you received.

A. That's right.

Q. But frequently it was less than that?

A. Yes.

Q. Do you license recording rights in addition to those records, phonograph records, other than to the motion pic-[fol. 558] ture people? Do you license rights for electrical transcription?

A. Yes.

Q. What do you charge for those rights?

A. I think we charge—I don't know just what we charge—we have two charges, one is double that of the other. I don't just remember what the charge is. I think it is ten and twenty, or fifteen and thirty; I am not sure.

Q. How did you determine that price?

A. I think we determined that price more or less by what the others were doing, other publishers were doing.

Q. That is in excess of the two cent price that you stated!

A. Yes. There is some relationship there too between—this is very vague—I don't handle that particular department, but there is some relationship there between the number of times it is used. I think it is—I don't really know; I would have to check on that detail.

Q. May I refresh your recollection?

A. Yes, you probably could, because

Q. Is it on the basis of 25 cents for a normal number and
50 cents for a production number?

A. Yes, 25 cents for a normal and 50 cents for an outstanding number; I think that is correct.

[fol. 559] Q. How do you license those?

A. Through an agent, through Fox.

Q. Through Harry Fox? A. Through Harry Fox.

Q. Called agent and trustee?

A. That's right. Q. Who is Mr. Fox?

A. Who is he?

Q. Yes.

A. He is our agent and trustee in this particular matter; he is also connected—I don't know whether he is still connected—with Music Production Association. He was employed when I first knew him by the Music Publishers Protective Association.

Q. Has he always been the agent and trustee or did he

succeed anyone?

A. He succeeded Mr. Payne.

Q. Mr. Payne; you mean who is now the general manager of ASCAP?

A. Yes.

Q. What was Mr. Payne's position at that time?

A. He was general manager of Music Publishers Protective Association and also acted as agent and trustee for publishers in connection with syncrhonization rights and

[fol. 560] Q. Is Carl Fischer a member of the Music Publishers Protective Association?

A. No.

Q. Are they a member of the Music Publishers Association of the United States?

A. Of the Standard Music Publishers Association.

Q. Can you tell me whether that 25 and 50 cent price is uniform with regard to transcriptions?

A. I believe it is pretty uniform; I think it is more or less a trade practice now, that price; I mean I haven't discussed it with anybody to know whether there is any change.

Q. You have no knowledge of how that price was origi-

nally determined?

A. No.

Q. I wonder if you would state what an electrical transcription is.

A. My understanding is that electrical transcription is a phonograph record made specially for broadcast purposes, operated at 33½ revolutions per minute instead of 78, which is the normal number of revolutions on a turntable for phonographs used in the home.

Q. In your direct testimony, you referred to the Oxford University Press. I believe you said that you had the sole agency rights. I wonder if you would explain just what

[fol. 561] you meant by sole agency rights.

A. Well, the Oxford University Press is the correct title of a firm, and they are large English publishers; we have the sole right to their music for the United States of America, we are the sole agents, sole selling agents. Under our agreement we also have the right to print from time to time such compositions as we deem it advisable to print here.

Q. Do you also have the right of public performance for

profit in the United States?

A. We have an interest in their performing rights.

Q. Do you have the right to license the performing rights?

A. The ASCAP has the right to license because the Oxford University Press are members of the English Society, and and through its reciprocal treaty of arrangements with ASCAP, they have in turn those rights—ASCAP hasn't, but we share in them.

Q. I notice in Plaintiffs' Exhibit No. 2, attached to the supplemental bill of complaint, in your suit, the list of mem-

and under the member Carl Fischer, Inc. is listed Oxford University Press. Do the performing rights in the copyrights owned by Oxford University Press come under the [fol. 562] ASCAP license by reason of your membership in ASCAP or by reason of the reciprocal agreement with the

performing rights Society of England?

A. They come under the repertoire through its affiliation with the English performing rights Society (PRS). Now, in addition to the Oxford University Press of London, there is also an Oxford University Press here in New York, who publish some music under their own copyrights, and we also have that agency, and I think under our agreement we have the performing rights direct with respect to this small catalogue that they have started here. I am not sure whether we have those performing rights direct by contract or just what the status is there, but they are unimportant.

Mr. Bennett: That is all. Mr. Boggs: That is all. Mr. Frohlich: That is all.

(Witness excused.)

(An adjournment was taken until the following day, Thursday, February 8, 1940, at 10:30 o'clock a. m.)

[fol. 563]

New York, February 8, 1940, 10:30 o'clock a. m.

Met pursuant to adjournment.

Appearances: Mr. Frohlich, Mr. Finkelstein, Mr. Bennett, Mr. Boggs.

OSCAR HAMMERSTEIN, called as a witness in behalf of the Complainants, having been first duly sworn, did depose and say:

Direct examination.

By Mr. Frohlich:

- Q. Where do you live, Mr. Hammerstein?
- A. Great Neck, Long Island.
 Q. What is your occupation?

- Q. How long have you been engaged in that occupation?
 A. Since 1919.
- Q. Do you write the music to musical compositions?

A. Yes.

Q. And you have also written what is known as a book [fol. 564] of dramatic musical works, stage plays, musical comedies, operas, and similar works?

A. That is right.

Q. Now, I show you what purports to be a list of works written by you and ask you if you recognize this as being accurate. (Paper handed to the witness.)

A. Do you want me to look through this?

- Q. Yes. Glance at it and see if it is correct.
- A. I can't testify whether it is complete or not.
- Q. That's right; but with respect to the works mentioned, are those works written by you?

A. Yes.

Mr. Frohlich: I offer it in evidence.

Mr. Boggs: No objection.

(List received in evidence and marked Complainants' Exhibit 9, of this date.)

Q. Now, Mr. Hammerstein, do you usually write your musical works in collaboration with a composer?

A. Yes.

Q. And have you collaborated with a great many composers over the years?

A. Yes, I have.

Q. And have your works been published by music publishers?

[fol. 565] A. Yes.

- Q. And have they been published by many musical publishers?
 - A. Yes, several; four or five, I should think.
- Q. Can you state some of the outstanding successful dramatical music works that you have written in the past ten to fifteen years?

A. "Wildflower." "Rose Marie." You want the shows?

Q. Shows, yes.

A. "Show Boat." "Desert Song." "New Moon." "Music in the Air." "Sweet Adeline." "Song of the

Flame." "Sonny." "Golden Dawn." How many do you want?

Q. That will be enough. Could you name some of the popular hit songs that you have written in the past few

years?

A. Yes. "Old Man River." "Lover, Come Back to Me." "When I Grow Too Old to Dream." "Who?" "All the Things You Are." "Can't Help Loving That Man." "Only Make Believe." "Bambellina." "Wildflower." "I Love You." "Stout-Hearted Men." Stop me when I have—

Q. That will be plenty. Did you write any hit songs prior to 1923?

A. Prior to 19231

Q. Yes.

[fol. 566] A. I have to think. Yes, I believe that the "Wildflower" songs were written before then; they were written in 1922.

Q. Do you know how many copies of sheet music were sold of that song?

A. No. I have no idea.

Q. You specialize in production numbers rather than popular songs, don't you?

A. Yes.

Q. And those songs of yours that did become popular were songs for the most part that were contained in shows!

A. All of them.

Q. Now, are you a member of the American Society of Composers, Authors and Publishers?

A. Yes.

Q. When did you first join up with that Society?

A. I am under the impression that was about 1923.

Q. And have you been a member continuously since that time?

A. Yes.

Q. Now, did you sign a renewal contract with the Society in July, 1935?

A. Yes.

Mr. Frohlich: It is stipulated that the witness entered into a contract with the American Society of Composers, [fol. 567] Authors and Publishers identical with the contract appearing in evidence as Plaintiffs' Exhibits No. 2 and No. 4.

Q. Can you tell us approximately what your average income has been from the American Society of Composers.

Authors and Publishers for the past ten years?

A. I should think about \$15,000, although that may be high for the past ten years. I am not certain. I know that is what it has been for the past five years.

Q. For the past five years?

A. Yes. It must be close to that.

Q. You are also a member of the Board of Directors of the Society of Composers, Authors and Publishers?

A. Yes.

Q. Now, is that contract between you and the American Society of Composers, Authors and Publishers of value to you!

A. Yes, it is.

Q. And do you hope and expect to renew that contract with the Society for further periods?

A. Yes.

Mr. Boggs: The question is objected to as irrelevant and immaterial.

Q. With respect to the shows that you have written, you [fol. 568] derive compensation from the public performance for profit of those shows by direct contact with the producer of the show, don't you?

A. Yes.

Q. As distinguished from the small rights, what would you say the rights are for the stage performance of your shows? What are they called, production rights?

A. And also known as grand rights in the trade; yes, as

distinguished from small rights.

Q. Those grand rights are not supervised by the American Society of Composers, Authors and Publishers?

A. No.

Q. And that is purely a matter of contract between you and the producer of the show?

A. Yes.

Q. You receive royalty from such producer based upon box office receipts?

A. That's right.

Q. Do you also receive royalties from your publishers for the sale of sheet music of your compositions?

A. That's right.

Q. As a rule, what has that royalty been?

A. Three cents a copy.

Q. Now, have your royalties from that source been sub-[fol. 569] stantial in the past two years?

A. Yes, they have.

Q. And has there been any change in the amount of royalties that you received for the sale of sheet music over the past fifteen or sixteen years?

A. No.

- Q. Has it been rather uniform with respect to your numbers?
- A. It has always been the same, only when I have collaborated, I mean in the lyrics, in which case I split with them.
- Q. Do you know from your royalty statement whether you have been selling as much sheet music in the past few years as you did prior to ten or fifteen years ago?

A. I should think not. I should think that the sales in

general have gone down.

Q. And has that also been reflected in moneys that you received for mechanical reproductions of your compositions?

A. Yes.

- Q. Could you tell us what is the cause of the diminution in returns from these sources?
- A. Well, we have obviously bad performances on the radio.
- Q. Now, with respect to your stage shows, have the num-[fol. 570] bers written by you for those shows been restricted from time to time, if you know?

A. Yes, very often.

Q. At whose request have they been restricted?

- A. At the request of the composer, sometimes the manager of the production, on the theory that too many performances on the air might hurt the novelty of the reception of the songs in the show.
- Q. As a rule, what does the producer of a musical show invest in its production?

A. Well, I should say anywhere from \$50,000, which is very low, up to \$200,000.

Q. And are musical shows more expensive to produce than straight legitimate dramas?

A. Very much more.

Q. Is that due to the fact that there is a much larger cast?

A. Due to that, plus the fact that there is usually a much bigger production; there is an orchestra to pay. The whole thing is multiplied by ten, I should say.

Q. And the numbers are restricted in order to safeguard

the investment of the producer?

A. That is right.

Q. And the restriction of these numbers is a common and [fol. 571] ordinary occurrence in your profession?

A. Yes, it is.

Q. Have any of your compositions been renewed with respect to copyright?

A. I don't think so; I don't think any of them are that

old.

Q. Do you expect to exercise your renewal rights if and when the time comes?

A. Yes, I do.

Q. When the original time expires?

Mr. Boggs: The question is objected to on the ground that it is leading and also calling for a speculative answer.

Mr. Frohlich: You may answer.

A. I do, of course.

Q. Do you expect to receive advance royalties from any of your compositions that you renew?

Mr. Boggs: The same objection. Mr. Frohlich: You may answer.

A. My answer is that I haven't considered that. I really haven't.

Q. Do you consider these renewal rights of value to you?
A. That I do, yes.

[fol. 572] Q. Are you able at this time to place a monetary value on the aggregate of all of your renewal rights?

A. No, of course not.

Q. Now, with respect to your published compositions, on what basis do you split with the publisher for the mechanical reproduction of your songs?

A. The publisher gets one cent and the author and com-

poser divide the remaining one cent.

Q. Now, as a rule, when you enter into a contract, does the copyright vest in the publisher?

A. Yes.

Q. And he undertakes to pay you royalty from the sale of the sheet music and from the mechanical reproduction of the music; is that right?

A. Yes, sir.

Q. Now, are you able to dictate to a manufacturer of rolls and records of your compositions with respect to any price that he must fix or determine for the public performance for profit of the particular rolls or records of compositions in the State of Florida?

Mr. Boggs: The question is objected to as leading and, further, on the ground that the witness has not been shown to be competent to answer the same; it calls for a conclusion of law.

[fol. 573] Mr. Frohlich: You may answer.

A. No.

Q. Have you any control over those rolls or records?

A. No.

Q. And when they are manufactured by the respective manufacturers of rolls and records, have you any control of the sale?

A. No.

Mr. Boggs: The same objection.

Q. Would you in the future be willing to grant to any manufacturer of records or piano rolls the right to fix a price for the public performance for profit of your records or rolls?

A. No.

Mr. Boggs: The same objection.

Q. So far as you are concerned, do you want to give that right to anybody at all?

Mr. Boggs: Same objection.

A. No.

Q. Do you want to give your publisher the right to fix and determine the price for the public performance for profit of your compositions?

Mr. Boggs: The same objection.

A. No. [fol. 574] Q. Have you ever given him that right in the past?

A. No.

Q. Do you want to give it to him in the future?

Mr. Boggs: The same objection.

A. No.

Mr. Boggs: Counsel for the defendants here calls attention to the fact that substantially all of the questions asked by plaintiffs' counsel are put in a form that is obviously leading.

Q. Have your compositions been played on radio broadcasting stations very much?

A. Yes, a great deal.

Q. And have they been played for the past fifteen years?

A. Yes, sir.

Q. Have you heard them played yourself?

A. Yes.

Q. Have you heard any of your compositions played within the past four or five years on the hookup of the National Broadcasting Corporation?

A. Yes, sir.

Q. Have you heard them so played on the Columbia Broadcasting hookup?

A. Yes.

[fol. 575] Q. And are your compositions played in the State of Florida?

A. Yes.

Q. Have you ever been in the State of Florida?

A. Yes, in the past few weeks.

Q. Did you ever hear any of your compositions played there on your last visit to Florida?

A. Yes.

Q. Can you state which compositions were played?

A. "All the Things You Are", "Old Man River," "Heaven in your Arms," "Only Make Believe," and probably several others that I don't remember now.

Q. Where were those compositions played?

A. In restaurants and over the radio.

Q. Can you give us the names of some of the stations in Florida where you heard them played?

A. WJNO, that is the only one I can remember.

Q. And can you fix the period more definitely?

A. Yes. I remember it was a weekend, Saturday night,

when "All the Things You Are" was the Number One song on the Hit Parade.

Q. That was over WJNO?

A. Yes, between 9:00 and 9:45, Saturday night, a week ago.

Q. That would be January 27th. Where is WJN0, [fol. 576] offhand?

A. West Palm Beach. I was in Palm Beach.

Q. Let me read to you, Mr. Hammerstein, Section 2 of the House Bill 1103, the New Florida Law passed in 1939:

"Section 2. It shall be unlawful for any person to sell, license the use of, or in any manner whatsoever dispose of, in this state, the performing rights in or to any musical composition or dramatico-musical composition which has been copyrighted, and is the subject of a valid existing copyright, under the laws of the United States, or to collect any compensation on account of any such sale, license, or other disposition, unless such person:

- "(a) Shall first have filed with the Comptroller on forms prescribed by the Comptroller a list describing each such musical composition and dramatico-musical composition, the performing rights in which said person intends to sell, license or otherwise dispose of in this State, which description shall include the following: The name and title of the copyrighted composition, the date of the copyright, the number or other identifying symbol given thereto in the United States copyright office, the name of the author, the name of [fol. 577] the publisher, the name of the present owner of the copyright to said composition, and the name of the present owner of the performing rights thereto. Additional lists of such copyrighted compositions may be filed by any such person from time to time, and shall be subject to all the provisions of this Act. A filing fee of two cents a composition shall be required by the Comptroller for filing any list under this Act.
- "(b) Shall simultaneously file an affidavit which shall describe the performance rights to be sold, licensed or otherwise disposed of and shall state that the compositions so listed are copyrighted under the laws of the United States, that the facts contained in the list to which said affidavit relates are true, that affiant has full authority to sell, license or otherwise dispose of the performing rights in such com-

position; and the affidavit shall set forth the name, age, occupation and residence of the affiant, and if an agent, the name, occupation and residence of his principal."

Now, with respect to dramatico-musical compositions, which is the legal and technical name for stage shows, these shows are produced and exhibited by various producers of stage shows?

[fol. 578] A. Yes.

Q. Have you any control over the places where these shows are exhibited?

A. No, not where the manager owns the road rights and he can take them wherever he pleases or, in the case of a stock exhibition like the St. Louis Municipal Opera or the Miami Bowl,—now, where there is a general fee being charged and the producer and the author share that lump sum fee, the only control either has is the assent to the price to be paid.

Q. Take a show generally, when you have written your musical compositions and turned them over to the producer of the show, from that moment on who has the right of determining the place for the exhibition of the show?

A. That is up to the producer entirely.

Q. Have you any voice in that whatever?

A. No:

Q. Contractually or otherwise?

A. No.

Q. And he may send it into the State of Florida or any other State of the Union?

A. That is right.

Q. Without consulting you?

A. That is right.

[fol. 579] Q. Are you able to state from the time when one of your musical compositions is bought until it is made a part of a stage show whether or not it is going to be exhibited at all or performed in the State of Florida?

A. No.

Q. You don't really know that until the show is produced down there; is that right?

A. Yes, sir.

Q. Now, are you in a position to fix and determine a schedule of prices on your musical compositions for all users in the State of Florida?

A. No.

Mr. Boggs: The question is objected to on the ground that it appears that the witness is not the owner of copyrights or performing rights therein.

Q. In order for you to ascertain and fix and determine the schedule of prices with respect to your musical works and your dramatico-musical works, with respect to performance rights therein, what information would you require?

Mr. Boggs: The same objection.

A. I would have to know what sort of a place the performance is going to take place in, what the seating capacity of the restaurant or picture house is going to be; I would [fol. 580] have to know the setup of the radio station; I would have to know a good deal about the whole situation in Florida, or any State, that I don't know and cannot possibly know.

Q. Could you ascertain that information yourself?

A. No.

Q. Would you have to employ someone to do it for you in the State of Florida?

A. I should think I would have to employ a whole army corps to ascertain it.

Q. Would that be an expensive proposition for you?

A. I should certainly think so.

Q. Are you financially able at this time to employ people to investigate the uses of your compositions in the State of Florida?

Mr Boggs: The question is objected to on the ground it is immaterial and irrelevant.

A. No, I am not financially able.

Q. Could you employ a lawyer in the State of Florida to seek redress for infringements of your compositions?

Mr. Boggs: That is objected to on the ground it is immaterial and irrelevant.

A. Well, I suppose I could employ a lawyer, but as to [fol. 581] what it would cost I don't know; it all depends; I don't see how I could keep a lawyer retained to check up all those performances.

Q. Have you any information at the present time that will enable you to fix and determine a price for the public

performance for profit of your compositions in the State of Florida on television?

A. No.

Q. Can you at this time fix and determine a price with respect to the performance rights on your compositions in Florida with respect to new methods of performances that may come into existence over the balance of your copyright period?

A. No.

Mr. Frohlich: You may cross-examine.

Cross-examination.

By Mr. Bennett:

Q. Mr. Hammerstein, you testified that you are a Directors of the American Society of Authors, Composers and Publishers. Are you on any committees of ASCAP?

A. Yes. I am on the committee that is discussing the radio contracts, the future ones; that is the only special committee I am on.

[fol. 582] Q. Are you on the Membership Committee?

A. I am not on the Membership Committee.
Q. Are you on the Classification Committee?

A. Being a member of the Board of Directors I am automatically on the Classification Committee. I was very helpful in classifying others authors. I am on no other special committee at all except the radio committee.

Mr. Bennett: That is all. Mr. Frohlich: That is all.

Gustav Schirmer, called as a witness in behalf of the Complainants, having been first duly sworn, did depose and say:

Direct examination.

By Mr. Frohlich:

- Q. What is your name?
- A. Gust / Schirmer.

Q. And what is your residence?

A. 812 Park Avenue, New York City.

Q. Where is your place of business?

A. 3 East 43rd Street, New York.

Q. Are you connected with any company? [fol. 583] A. I am the secretary of this company that bears my name.

Q. What is the full name of that corporation?

A. G. Schirmer, Inc.

Q. What business is the corporation engaged in?

A. It is engaged in the publishing of music.

Q. How long has it been engaged in that business?

A. Since 1865.

Q. Was the company founded by members of your family?

A. It was founded by my grandfather.

Q. What kind of musical compositions does it specialize in?

A. It publishes in every field of classical music, orchestral, piano music, vocal music, orchestral music, organ music, church music, and light operas.

Q. Now, does it from time to time publish musical oper-

ettas and stage musical plays?

A. That's right. We were the first publisher of Friml's

light operas.

Q. Now, can you mention some of the more successful musical plays that you published the music of over the past

ten to fifteen years?

- A. "Firefly." "High Jinks." "Katinka." "Maytime," that's by Romberg. "Sweethearts," by Victor Herbert. "Debutante," that's by Victor Herbert. "Natona." [fol. 584] Q. Did you also publish individual musical compositions?
 - A. Of a popular nature.

Q. Of a popular nature?

A. Yes. We published "Trees"; "Sylvia"; "Oh, Promise Me." All outstanding numbers.

Q. Are you a member of the American Society of Authors, Composers and Publishers?

A. Yes.

Q. When did you first join up with that organization?

A. 1919.

Q. Are you a member of the Board of Directors?

A. Yes.

Q. Have you a contract presently in existence between

yourself and the American Society of Authors, Composers and Publishers?

A. Yes.

Mr. Frohlich: It Is Stipulated that the witness has entered into a contract in 1935 with the American Society of Authors, Composers and Publishers identical with that of Plaintiffs' Exhibits Nos. 2 and 4.

Q. Do you expect to enter into additional contracts with the American Society of Authors, Composers and Pub-[fol. 585] lishers of a similar nature from time to time? A. Yes.

Mr. Boggs: The question is objected to as being conjectural.

Q. Is that contract now in existence between you and the American Society of Authors, Composers and Publishers of value to you?

A. Of great value.

Q. Can you give us an average figure of what you have received by way of compensation from the American Society of Authors, Composers and Publishers under that contract for the past five years?

A. In the neighborhood of \$500,000.

Mr. Boggs: A year?

The Witness: No, that is the total in the last five years; on an average of between \$90,000 and \$100,000 a year.

Q. And is there a reasonable expectation that you will receive similar moneys in the future?

Mr. Boggs: The question is objected to on the ground that it is immaterial and conjectural.

Mr. Frohlich: You may answer it.

A. Yes.

Q. Do you want to keep that contract presently entered [fol. 586] into alive?

A. I certainly do.

Q. And you want to be free to enter into contracts of a similar nature with the American Society of Aut-ors, Composers and Publishers?

A. I certainly do.

Q. You don't want that contract between you annulled and voided, do you?

A. No.

Q. Now, prior to 1923 did you have substantial sales of popular numbers that you published?

A. Yes.

Q. I mean hit numbers, numbers that were outstanding.

A. Yes.

Q. And how high did some of those sales go?

A. 200,000 or 300,000 copies a year, which is high in our field compared with the popular field. Could I mention some of them?

Q. Please mention some of the songs sold between 200,000 and 300,000 copies prior to 1923.

A. "Sympathy"; "Will you Remember"; "Oh, Promise

Me."

- Q. Now, have you found any falling off in the sales of your hit numbers since 1923?

 [fol. 587] A. Definitely.
 - Q. What do you sell now of a popular composition?

A. Of that similar nature?

Q. Of a similar nature.

A. I should say not more than 40,000 to 50,000 copies.

Q. Now, what moneys did you receive from the popular songs prior to 1923 from your mechanical rights?

A. You mean from gramophones?

Q. From piano rolls and records.

A. Records, you mean from one composition?

Q. Take one composition which sold between 200,000 and 300,000 copies prior to 1923.

A. We would receive \$500,000 to \$600,000.

Q. Do you receive that much today from that source?

A. We don't.

Q. To what do you attribute the falling off in receipts of revenue from sheet music and records since 1923?

A. Playing the compositions on the air has affected the sale.

Q. Now, when you obtain a composition for publication from a writer, composer, or both, what is the regular procedure in that respect?

A. We enter into a contract with the composer for him to get a royalty and a percentage of the mechanicals.

[fol. 588] Q. Do you retain and secure the copyright in the name of your firm?

A. We do.

Q. And you copyright these compositions yourself in your name?

A. Yes.

Q. And do you personally own the copyrights in most of the compositions that you publish?

A. Yes, we do.

Q. Subject to payment of royalties to the writers?

A. Right.

Q. Now, when you make an arrangement with the mechanical reproducing people of records and rolls, on what basis do you make that?

A. It is a statutory fee fixed at two cents a record; and

rolls, there aren't any more rolls.

Q. With the money you receive from that source, the mechanical reproduction, do you split that with the writers?

A. Yes.

Q. What is the usual basis of the split?

A. Fifty per cent.

Q. When you license your compositions with the manufacturers of rolls and records, do you reserve to yourself any right with respect to where they are to be sold or how [fol. 589] they are to be sold?

A. No.

Q. That is determined by the manufacturer of the roll or record, isn't it?

A. Right.

Q. Have you any control over the manner in which the manufacturer splits on the roll or record?

Mr. Boggs: The question is objected to on the ground that it is irrelevant and immaterial.

Mr. Frohlich: You may answer.

A. No.

Q. Is there any manner, contractual or otherwise, whereby you can compel the manufacturer of a roll or record to fix and determine the price for the public performance for profit of that roll or record in the State of Florida?

A. No.

Mr. Boggs: Same objection.

- Q. Have your compositions been played in the State of Florida?
 - A. Yes.
- Q. Have your compositions been played over the radio stations of the NBC national hookup?
 - A. Yes.
- Q. Have they been played over the national hookup of [fol. 590] the Columbia Broadcasting System?
 - A. Yes.
- Q. When they are so played, have you any control over the particular Florida stations where they are to be rebroadcast?
 - A. No.
- Q. If they are played on a hookup may they also be played on some broadcasting station in Florida if that station is hooked up with the NBC or Columbia Broadcasting System?
 - A. Yes.
 - Q. You do not control that at all?
 - A. No.
- Q. Are you willing to have your compositions played free and available to the public over the radio in the State of Florida?
 - A. No.

Mr. Boggs: I object on the ground it is immaterial and irrelevant.

- Q. Now, you have published a great many works of your own, haven't you?
 - A. Yes, we have one of the largest catalogues.
- Q. Let me read to you Section 2 of the Florida House Bill No. 1103, 1939;

[fol. 591] "Section 2. It shall be unlawful for any person to sell, license the use of, or in any manner whatsoever dispose of, in this state, the performing rights in or to any musical composition or dramatico-musical composition which has been copyrighted, and is the subject of a valid existing copyright, under the laws of the United States, or to collect any compensation on account of any such sale, license, or other disposition, unless such person:

"(a) Shall first have filed with the Comptroller on forms prescribed by the Comptroller a list describing each such musical composition and dramatico-musical composition,

the performing rights in which said person intends to sell, license or otherwise dispose of in this state, which description shall include the following: The name and title of the copyrighted composition, the date of the copyright, the number or other identifying symbol given thereto in the United States copyright office, the name of the author, the name of the publisher, the name of the present owner of the copyright to said composition, and the name of the present owner of the performing rights thereto. Additional lists of such copyrighted compositions may be filed by any such person from time to time, and shall be sub-[fol. 592] ject to all the provisions of this Act. A filing fee of two cents a composition shall be required by the Comptroller for filing any list under this Act.

"(b) Shall sign simultaneously file an affidavit which shall describe the performance rights to be sold, licensed or otherwise disposed of and shall state that the compositions so listed are copyrighted under the laws of the United States, that the facts contained in the list to which said affidavit relates are true, that affiant has full authority to sell, license or otherwise dispose of the performing rights in such composition; and the affidavit shall set forth the name, age, occupation and residence of the affiant; and if an agent, the name, occupation and residence of his principal."

Would you be able, Mr. Schirmer, to prepare and file a list containing the matter which I just read to you now?

- A. Well, that would be a tremendous task, and I don't believe we could carry it out. We have over 50,000 compositions in our house.
 - Q. Have some of your compositions become obsolete?
- Q. Have the composers of many of your compositions [fol. 593] passed away?
- A. Yes, especially with an old firm like ours; in an old business like ours, eighty years old, lots of things happen in eighty years. I am the third generation.
- Q. Would you be able to prepare an affidavit containing information such as is required in Bill 1103, as just read to you?
 - A. I would hate to undertake to do that.

Q. Would you undertake to swear to the truth or accuracy of a list such as is required by this Section 21

A. No.

Q. With regard to music numbers which are published by your firm and which are contained in musical productions on the stage, are these compositions frequently re-

stricted with respect to performances?

A. That depends upon the arrangement with the managers. Sometimes the managers want them restricted for a limited period of time; other times they do not. If the show is not especially successful, they want them played on the air because they believe it will popularize their show.

Q. When the show is a successful show in a large city

they do not want them, as a rule?

A. That is right.

Q. Now, can you explain why that is done, why that

[fol. 594] restriction is put on these works?

- A. No, I never could. Where it was the managers;—they are very inconsistent about it,—sometimes some manager who asks you to restrict a number in a show, in the next two or three weeks will turn around and tell you not to restrict it.
- Q. Where they have asked you to restrict these numbers, have you done it?

A. Yes.

Q. And you have done that by informing the American Society of Composers, Authors and Publishers that it will be placed on the restricted list?

A. Yes.

Q. And you want to reserve the right to yourself to restrict these numbers from time to time?

A. We do.

Q. Now, you know that the Society issues its licenses under a form of blanket license to the user, don't you?

A. Yes.

Q. You know that from your experience as a member of the Board of Directors?

A. Yes.

Q. Do you want the Society to continue to license your [fol. 595] compositions in the State of Florida under a blanket license?

A. Yes.

Q. Are you able at this time to prepare a schedule of prices on each and every one of your compositions with

respect to public performance for profit in the State of

A. That would not be possible to do.

Q. Now, if you were required to do that under the Act, under this House Bill 1103, what information would you have to have?

A. Well, it would have to be taken up with the various composers and writers, and every composer and writer would have a different idea as to what price should be quoted on their compositions; you might quote a price for one composer that would be unsatisfactory to another composer; I don't see how you could do that. Victor Herbert's heirs might want more than Friml's, and Friml's might want twice again as much as Herbert's.

Q. In other words, if you were to prepare such a schedule, the next thing you would have to enter into a new contractual arrangement with your respective writers and

composers ?

A. We would, yes.

Q. Before you did that would you have to have informa-[fol. 596] tion with respect to the users of Florida?

A. Yes, that's right.

Q. Would you have to have information with respect to the nature of the establishments that had licenses?

A. I presume so, naturally.

Q. And the size and the extent of the use?

Mr. Boggs: The defendant objects because the witness is being most obviously led by counsel in this examination. Mr. Frohlich: Well, you may answer that.

A. I would answer it Yes.

Q. Now, could you do that yourself?

A. No.

Q. How would you go about doing that?

- A. Well, I would have to send somebody down to see each place that asks for a quotation, see what the use of it was, what the situation was governing it. It just couldn't be done.
- Q. Would you have to employ somebody to see that there is no infringement on your music in the State of Florida?

A. Definitely.

Q. Would you have to employ legal counsel in the State of Florida to protect you against infringement?

[fol. 597] A. Yes; obviously we would have to do that.

Q. Would the employment of these people involve a substantial expense to you?

A Yes, certainly would.

Q. Are you willing to undertake that expense?

A. No, I am not.

Q. What is today the greatest source of revenue from your works?

A. From the performing Society.

Q. That is to say, the moneys that you receive from the American Society of Authors, Composers and Publishers?

A. Right.
Q. Do you know of your own knowledge of the business

that is true with respect to other publishers?

A. Yes.

Q. And also with respect to writers?

A. Yes.

Mr. Frohlich: You may cross-examine.

Cross-examination.

By Mr. Bennett:

Q. Mr. Schirmer, you stated that you were on the Board of Directors of ASCAP.

Are you on the Membership Committee or any other [fol. 598] committee of ASCAP?

A. I am Treasurer of ASCAP, and I am on the Availability Committee of the Publishers.

Q. Any other committee?

A. No.

Q. For the purpose of the record, will you say what you mean by "Availability Committee," what its function is?

A. The Availability Committee of the Publishers classifies the availability of all publishers as distinguished from the revenues of ASCAP, and are divided in three manners: 1, performances of the actual composition, the publishers are paid for performance; then there is the category per catalogue. They classify various catalogues as to the nature of what they have in the catalogue and the type material which is made available, regardless of whether it is performed or not.

Q. You mean by that that the Availability Committee determines the quantity of musical compositions controlled or owned by publishers?

A. I don't say quantity enters into it. For instance, a certain type publisher only publishes standard music, certain publishers specialize in different types of music, while a publisher who is available to Spanish music, which would [fol. 599] be tangos and rhumbas, things of that sort, that is considered an availability which some other publisher hasn't got, maybe only have a limited number; and there are other type publishers who publish, for instance, violin music, some publishers do not have violin music. You will find that in popular publishers they do not have things published for violin to any extent; yet others have a tremendous amount of violin music, and some publishers publish a great deal of church music, these various gospel hymns and things of that sort, others of a different nature. Some catalogues specialize and the availability of those catalogues is classified.

Q. What is the purpose of the classification?

A. Well, because—for the publisher who can offer his repertoire which is necessary for the users of ASCAP so there will be a fair distribution. You might say he doesn't have a popular hit of the day, yet his catalogue is available, and the users have to find this particular type of music. So therefore that availability is rewarded in classification. In other words, if you join the Society, your catalogue of various compositions-it may not be popular current hits of the day-but they may have tremendous value to the Society by the nature of their availability, or in other words, what they have made available, not so [fol. 600] much quantity used as something that is used thousands of times, as it is a matter of when users wish that particular type of music, it is there for them to use; and that is what I meant by availability in the catalogue. I mean quantity does not always enter into it, because you may be a publisher of ten thousand little teaching pieces and they may be of no use at all, because users would not care to use little teaching pieces; they would be of no value. Yet if you wanted some Japanese music or some Oriental music, something of that sort to play, which is done all the time, then you have to go to a catalogue which has that type of music.

Q. I take it then from what you have said that the purpose of the classification is to assist in distributing the income of the Society to the respective publishers?

A. That is right.

Q. How many publishing members are there in the ASCAP?

A. Well, I think in the neighborhood of 110; there may

be one or two more added lately.

Q. Do those publishers frequently own additional publishing companies for catalogues which they have acquired?

A. You mean is there more than one publisher and one publisher owns two or three catalogues?

[fol. 601] Q. Yes.

A. Yes, there are several instances.

Q. What percentage, in your opinion, of the available usable music in the United States is controlled by those

publisher members?

A. Of course, it is only controlled by—the music is only controlled by the Society; it is the music of the thousands of writers who are members of ASCAP and, of course, they are the leading writers of the country. There is the music of Herbert, Friml; there is a tremendous amount of music which is in the public domain, like Beethoven's music, Chopin, or the works of all the old authors. Those people are not members of ASCAP.

Q. You have stated that your company, G. Schirmer, Inc.,

controls about 50,000 compositions?

A. Different compositions, yes, but I would not say all those 50,000 compositions are of a performing nature.

Q. Now, how many-

A. But you can never tell when somebody might want to perform them. In an old catalogue like ours we naturally have all the classics: Mozart, Beethoven, Chopin, Chaminade, and all great composers, though they are dead. We have arrangements of those things.

Q. Those arrangements are copyrighted? [fol. 602] A. Those arrangements are copyrighted. We may have a man like Percy Grainger make an arrangement of "Country Garden," "Londonderry Air," and so forth.

Q. The public performance of that comes under the

ASCAP license?

A. Yes.

Q. And with respect to publishers and other members of ASCAP, approximately how many copyright compositions are in the repertoire of ASCAP and how many do you think they control?

A. How many copyright arrangements?

Q. All kinds of copyright compositions, whether they have arrangements or are original melodies?

A. I could not answer that question offhand.

Q. Well, if you control 50,000 compositions yourself, and there are somewhat over 100 other publisher members in ASCAP—

A. Some publisher members of ASCAP have more than 500 compositions, some 200, and some 100 compositions.

Q. I thought you testified that in connection with the Availability Committee, you stated the availability of the material—

A. That is true of that 110 publishers. There are a great many smaller publishers. There are some publishers who [fol. 603] have only twenty works, or twenty-five works—very small publishers.

Q. Let's take some of the larger publishers: what is the

availability in the Harms catalogue?

A. That is the largest of all of a certain nature, because it controls more musical comedies and plays than any publisher in the country. Harms has specialized in opera all their career. They have control of all those works of Kerns and Cole Porter; they have been the largest publishers in the country of that type of work.

Q. About how many compositions would you say they control?

A. Well, you see, that depends upon how many compositions are in the score. They control the score, and some scores contain more numbers than others. They are not all the same number; there are thirty numbers in some scores and in some there are ten numbers. How many scores and operettas they control I really don't know, because I have never—

Q. From your investigation for the Availability Committee, can you give us some idea of approximately what they control?

A. It must be on an average, since they have been members, they must publish on an average of at least 1,000 plays, [fol. 604] I should say. Some of these plays are not successes on Broadway; a few years later a composition comes out from one of those scores, sometimes a score which may have reached only a week or two and closed, a Broadway production, and then later something from that score becomes extremely popular.

Q. Is Harms as large as G. Schirmer in the quantity of stuff they control?

A. No. They ar · larger in the type of things they control, but they have general color, such as Friml's rights.

Q. Would you say that they are about half the size of Schirmer?

A. I don't know whether you are speaking of business that is done in dollars and cents, or whether you are speaking in quantity of material.

Q. I am speaking of material which

A. No, they are not half the size of Schirmer, by a means; but, you see, this is particularly from the volume of business done. Music of the type which a publisher publishes, is sold for a great deal more than the little easy teaching piece. If you buy a composition from an operetta you will probably pay a great deal more for it than if you are buying a little teaching piece for five or ten cents. If you buy one of these operas you pay something like 40 to [fol. 605] 50 cents. So far as one concern is able to do more than someone else—if you are selling a few choruses to a church you do not get very much for them; if you have a choir in the church you can buy church music very much cheaper than production music.

Q. From your knowledge as a member of the Availability Committee, would you say that they would control one-third

as much as Schirmer?

Mr. Frohlich: I object to that. The witness has testified he cannot tell you exactly how much their catalogue is in comparison with Schirmer's.

A. It is a different type of catalogue. It is highly specialized in a certain field.

Q. What is the classification of Harms by ASCAP for the purpose of receiving income?

A. Well, they have the highest classification of any pub-

lisher.

Q. Now, can you give us an idea of how much is con-

trolled by Witmark?

A. Witmark controls the majority of the Victor Herbert works. They also are specialists in that type of composition. I should say that they are one-half of what Harms would be; it depends very much more upon the nature of the works which these catalogues control than on who the authors are. If you have a catalogue of Victor Herbert, you

[fol. 606] have a catalogue because Victor Herbert was one of the great writers of the day and is still in vogue, whether he is alive or dead. The Witmark catalogue just takes in the old compositions, never had any words to it. Witmark has just taken a composition which never had words to it, a melody of Herbert's called "Summer Serenade," and published within the last couple of months with words, somebody wrote the words to it, and the Victor Herbert melodies become known as the Number One hit of the day.

Q. Let me put the question in another form. From your knowledge acquired in connection with the Availability Committee, would you say that substantially all of the music in a form suitable for public performance for profit is contained in the ASCAP repertoire, as represented by the

respective publishers and other members?

A. Now, just repeat that question.

Q. (Question repeated.)

A. Well, the answer to that would be Yes.

Q. Mr. Schirmer, does G. Schirmer sell recording rights to motion picture producers for incorporation in motion pictures?

A. We have licensed motion picture producers to use some of these musical plays, which are produced as plays

and then become pictures.

[fol. 607] Q. Do you license the separate copyright works which G. Schirmer has acquired for incorporation in pictures as background music or for other purposes?

A. Yes.

Q. How do you arrive at the price you charge motion pictures companies for the right to record a particular number on the sound track of film?

A. It depends entirely upon the type of the composition and who the composer is. In other words, if you were buying a picture and you wanted to use a composition, "On the Road to Mandalay," and I know as a matter of fact that the producer of the picture comes to you just because you have that particular work and he cannot use anything else in the place of "On the Road to Mandalay;" or if there is a song he wants to use called "I Love you Truly," the director says "I want to use 'I Love You Truly," and there is no substitution for that, that is worth a great deal to a motion picture producer.

Q. You fix a price then on each individual composition?
A. Together with the composer; that is a matter in which

he is interested. We naturally will tell the composer we have an opportunity to place his composition in such a film and he will say what he values that at. Together we ar[fol. 608] rive at a figure.

Q. Is that a common practice, so far as you know, with

most music publishers?

A. Well, I don't know very much about how the other publishers do it; that's the way we do it. We have no affiliation with motion picture producers; we have no blanket contracts with them at all. They have the right to use our things. If it is just a little background music there would be a different price for it than for a standard work of importance.

Q. Do you also license the recording of your compositions

for what are termed electrical transcriptions?

A Yes.

Q. How do you arrive at the price you charge for re-

cording on electrical transcriptions?

A. Well, that too, again depends upon the nature of the work. If it is an important work we ask more for it than if it is something not so important. Again, if you want an electrical transcription of something of Victor Herbert's or Rudolph Friml's, or compositions which have a national reputation, you will have to pay more for it than for something that is unknown.

Q. Do you make an individual contract each time in connection with your recording of a number on an electrical

[fol. 609] transcription?

A. We usually make an individual contract, and then we make that contract. Suppose you wanted to broadcast something, say "On the Road to Mandalay," or on some such composition, we don't then charge you a different fee for that again; we charge you the same fee; if you were using it twenty times you are paying that same fee when we once agree with you what you are to pay for it; that is, for that particular transcription. I mean if you are evidently going to use that electric record over certain air stations, once you agree to pay for it, you will pay that fee, but you have to negotiate for that fee.

Q. Does that fee vary as to the quality and type of each

individual number that is involved?

A. That is right.

Q. Each transcription is a separate transaction?

A. That is the way it is handled.

Mr. Boggs: When your firm obtains a copyright it receives a card from the Copyright Office, recording the fact that that copyright is registered; isn't that so!

The Witness: Yes, sir.

By Mr. Boggs:

Q. What do you do with those cards?

[fol. 610] A. Those cards are kept in our office.

Q. You have a regular file in which they are kept?

A. Yes.

Q. And that would be true with regard to all of your copyrights, wouldn't it?

A. Yes, we would have a record of it.

Q. And that card would show the date of the copyright and the name in which it was registered, wouldn't it?

A. That is right.

- Q. And would show the number of the copyright?
 A. The Government issues a number for each card.
- Q. And then you have a different system of numbering of your own?

A. Yes, our numbers of compositions do not tie up with the register number at all.

Q. But you preserve all those cards which you receive

from the Copyright Office?

A. I don't know how far back we have got them; I can't tell you that every card is there, because I know that is not so.

Q. Still that is the regular practice of the office?

A. That is the regular practice. I do not think the Government issued cards all the time. They didn't always issue copyright cards. There was one time they used to send you [fol. 611] the music back and write something on it; it wasn't always that they issued cards. Just how long the Government has been issuing cards I don't know offhand.

Q. Do you keep something in the nature of a register of composition which your firm owns?

A. Yes.

Q. What information is shown on that register?

A. The title of the composition and the plate number of it; that's all.

Q. Does it show the name of the author and composer?

A. Whether that is in the register or not I couldn't say. I don't think it is. That would be in the contract, and I

know when we want to find out something we have to look at the plate number and we have to go and find out from that who the composer is.

Q. To what do you refer as the plate number?

A. On the copy, on the music, is printed a plate number and, as you go along, you add to that. For instance, if it is 25,000, then the next one is 25,001, going right along.

Q. Those are numbered consecutively?

A. Yes.

Mr. Boggs: That is all.

(A recess was taken until 2:30 o'clock p. m.)

[fol. 612]

After Recess.

SAUL H. Bornstein, called as a witness in behalf of the Complainants, having been first duly sworn, deposes and says:

Direct examination.

By Mr. Frohlich:

- Q. What is your full name?
- A. Saul H. Bornstein.
- Q. Where do you reside?
- A. New York City, 14 East 75th Street.
- Q. With what firm are you connected?
- A. Irving Berlin, Inc.
- Q. Is Mr. Irving Berlin also a director and officer of that corporation?
 - A. Yes, sir.
- Q. Have you been associated with him in that corporation for many years?

A. I have been associated with the company since its inception.

- Q. How long has that been?
- A. 1919.
- Q. What is the business of that company?

A. Publishing music.

[fol. 613] Q. Does it specialize in the publication of any particular kind of music?

A. Not necessarily.

Q. Can you tell us just briefly what kind of music it does publish?

A. It publishes particuoarly popular music and produc-

tion music, and some standard music.

Q. Now, by production music, just what do you mean?

A. Songs that are written for a dramatic show, a musical production.

Q. Now, have you from time to three published any socalled hit numbers?

A. Yes, sir.

Q. Has Mr. Irving Berlin turned over his compositions to your company for publication?

A. Yes, sir.

Q. And your company publishes all of his music?

A. Yes, sir.

Q. Have some of his compositions been popular?

A. Yes, sir.

Q. Have they achieved outstanding popularity?

A. Great popularity.

• Q. Now, can you name some of the earlier compositions published by you prior to 1923 that were very popular [fol. 614] and big hits?

A. Well, you mean both production and popular?

Q. Both.

A. The songs in the various Ziegfeld Follies productions; the songs in the scores of the Music Box Revues; such songs as "My Mama"; "Put Me To Sleep In My Old Kentucky Home"; "You'd Be Surprised"; "I've Got My Captain Working For Me Now." Shall I keep on giving them?

Q. Yes, please. A. "Nobody Knows and Nobody Seems to Care." Did

you say 1923?

Q. Yes, prior to 1923.

A. I would have to go back to that list; hundreds, hundreds of them.

Q. Which ones of those that you have named sold as high as a million copies of sheet music?

A. "Put Me To Sleep In My Old Kentucky Home";

"Mamy".

Q. Now, can you name some of the numbers that you published after 1923 that were outstanding hits?

A. Yes, sir. "What'll I Do?"; "All Alone"; "Yes, Sir, That's My Baby;" "When You and I Were Seventeen;"

"Yearning"; "Oh, How I Miss You To-night." Do you want some more?

Q. No, that will be sufficient. Did any of those numbers [fol. 615] sell as high as a million copies?

A. Yes, sir.

Q. Which?

A. Most of them.

Q. I am speaking of numbers after 1923.

A. Yes, sir. Oh, 1923? Well, 1923 to about around—1923 to 1924, after that they didn't sell quite so much.

Q. And what has been your experience with respect to the sale of sheet music before 1923 and after 1923?

A. Before 1923 a successful song hit would sell between a half million and a million and a half copies. We could sell a great many songs, to the extent of about 100,000 copies, that were not considered hits.

Q. Now, after 1923 what was the situation?

A. After 1923 those songs that we could get about 100,000 sale out of disappeared, or sold perhaps five or ten thousand copies, and the million copy hits vanished, with probably a rare exception here and there, none of which I can think of at the moment.

Q. And what would you say that was due to, Mr. Bornstein?

A. That was due to the radio, in my opinion.

Q. I neglected to ask you what office you occupy with the Irving Berlin Company, Inc.?

[fol. 616] A. I am the secretary, the treasurer and the general manager.

Q. Have you charge of the publishing of the compositions?

A. I have charge of everything that comes under the general manager duties.

Q. Now, with respect to mechanical reproduction rights of your compositions prior to 1923, can you tell us what amount of money on the average you received from the manufacturers of rolls and records on hit numbers?

A. You mean in bulk?

Q. In bulk.

A. Prior to 1923 Irving Berlin, Inc. had a revenue from mechanical reproduction that was approximately \$400,000 a year.

Q. And what has been its average yearly income from

mechanical royalties on its compositions since 1923 down to the present time?

A. It has dropped down to approximately 5 to 10 per cent,

between 5 and 10 per cent of that amount.

Q. And do you attribute that diminution in revenue to the same source, radio?

A. I do.

T too

Q. Now, in the publishing of your compositions, have you [fol. 617] particularly restricted the performances of those compositions?

A. Yes, sir.

Q. In which particular compositions as a rule do you restrict?

A. Production numbers.

Q. Is there any particular reason for restricting such numbers?

A. So as to prevent the over-rendition of the so-gs from a musical production, so that they would not compete with the production itself.

Q. Now, you entered into contractual arrangements with the writer and composer. Will you just please briefly state the mechanics of it, just what happens when a man walks into your office with a composition.

A. You want the story of what happens to a song?

Q. Yes.

A. Songs are submitted to Irving Berlin, Inc., either to the professional exploitation manager cr one of his lieutenants, and sometimes directly to me; but in all cases the song must receive my approval before it is published. If we like the manuscript we give the writer a contract and send him in to our arranging department. The chief arranger takes down the melody and makes a piano part, from which we [fol. 618] print up what is known as professional artist's copy; at the same time the chief arranger makes a vocal orchestration in the various keys, and a dance orchestration arrangement, and suitable also to band arrangement. All this material is printed up and sent to our branch professional departments throughout the country, as well as in the home office, and in these various places we have a staff of contact men, whose job it is to contact the various artists and find out if the song is suitable to them and whether they are interested in doing the song. Sometimes a song will be tremendously performed, but will not sell.

Q. Now, in contacting performers of these compositions, do you distribute professional copies?

A. Yes, sir.

Q. Are these distributed gratis?

A. Yes, sir.

Q. Is it necessary in the conduct of your business to distribute these professional copies?

A. Yes, sir.

Q. Is that a part of the plug of the song?

- A. That is what we call plugging. Plugging, which means exploitation.
- Q. Now, you have published a great many compositions [fol. 619] over the years, haven't you?

A. Yes, sir.

Q. Do you know exactly how many compositions you have published?

A. No, sir.

- Q. Is there any way in which you could ascertain that information?
- A. Well, it would be very difficult to get an accurate compilation of all the compositions we have published.
- Q. What would you say is the value of your present catalogue of music in dollars and cents?

A. You mean of our copyrights?

Q. Of your copyrights.

Mr. Boggs: I object to that question on the ground that no proper foundation has been laid.

Q. You may answer it. A. May I answer it?

Q. Yes.

A. It is my opinion that the catalogue of Irving Berlin, Inc., would be appraised at approximately \$2,000,000.

Q. Did Warner Bros., some years ago purchase a catalogue of musical publications in New York City?

A. Yes, sir.

Q. Whose catalogue did they purchase?

[fol. 620] A. They purchased the catalogues of M. Witmark & Sons, Harms, Inc., Jerome H. Remick & Company, and one or two other small subsidiaries.

Q. Do you know what they paid for those catalogues?

A. Yes, sir.

Q. How much?

A. I understand that they paid approximately—of course, I don't know the exact figure.

Q. What is the approximate figure?

A. Approximately \$10,000,000.

Mr. Boggs: I object to it.

Q. Are you a member of the American Society of Composers, Authors and Publishers?

A. Yes.

Q. When I say you I mean your firm, Irving Berlin, Inc.

A. Irving Berlin, Inc. is a member of the American Society of Composers, Authors and Publishers.

Q. When did it first join up with that Society?

A. In 1919.

Q. Has it been a member since then continuously?

A. Yes, sir.

Q. What moneys did your company receive from anybody, any person, firm or corporation, or from any source whatever for the public performance for profit of your com-[fol. 621] positions prior to 1914?

Mr. Boggs: The question is objected to on the ground it is immaterial and irrelevant.

Mr. Frohlich: You may answer.

A. None. Nothing.

Q. When for the first time did your company receive any revenue for the public performance for profit of your compositions?

Mr. Boggs: The s-me objection. Mr. Frohlich: You may answer.

A. When did the American Society pay it to us? I think that was in 1921.

Q. And has Irving Berlin, Inc. been in receipt of revenues from the American Society of Composers, Authors and Publishers for those rights since 1921?

A. Yes, sir.

Q. Are those payments made on some regular basis?

A. Yes, sir.

Q. How, particularly?

A. Quarterly.

A. Approximately \$500,000.

[fol. 622] Mr. Frohlich: It is Stipulated that Irving Berlin, Inc. entered into an agreement with the American Society of Composers, Authors and Publishers in July 1935, identical with Plaintiffs' Exhibits 2 and 4.

Q. Now, do you regard that contract with the American Society as valuable to Irving Berlin, Inc.?

A. Extremely so.

Q. Would you want that contract between Irving Berlin, Inc. and the American Society of Composers, Authors and Publishers annulled and voided?

A. Definitely not.

Q. Would you want Irving Berlin, Inc. to give up their membership in the Society?

A. No, sir.

Q. Would you want to continue to be a member of the Society in the future?

A. Yes, sir.

Q. And do you want to be free to make future contracts with the American Society of Composers, Authors and Publishers similar to those now existing?

A. I could not remain in the music publishing business if I did not receive such revenues from the American Society. [fol. 623] Q. Is the revenue from the American Society today one of your chief sources of revenue?

A. It is the chief source.

Q. In your contracts for the mechanical reproduction of your musical compositions, how much do you receive from these mechanicals, for each composition; on what basis do you contract for them?

A. For the mechanical reproduction of our songs we receive from one-quarter cent per side of a record up to two cents per side of a record.

Q. Do you give any part of that money to the respective authors and composers of the compositions?

A. Yes, sir.

Q. On the average how much do you give them?

A. At the present time they receive 50 per cent.

Q. When the author and composer makes a contract with you for the publication of the composition, who obtains the right to secure the copyright of that composition?

A. The author.

Q. The right to secure the copyright?

A. Irving Berlin, Inc.

Q. And do you invariably secure such copyright in the name of Irving Berlin, Inc.?

[fol. 624] A. Yes, sir.

Q. And with respect to the compositions that you publish do you presently own any great percentage of the actual copyrights of your compositions?

A. Yes, sir.

Q. When you make an arrangement with the manufactu-er of the mechanical records or rolls for your compositions, do you make any restriction or condition with respect to the sale of those records or rolls?

A. No. sir.

Q. And when those records or rolls are manufactured pursuant to the license that you grant, do you have anything to do with the sale or exploitation of those records or rolls?

A. No, sir.

Q. Have you any control over the public performance for profit of those compositions from the records or rolls?

A. No, sir.

Q. Could you prevent the manufacturer of rolls or records from taking those records or rolls into the State of Florida?

A. No, sir.

Q. Could you compel the manufacturer of records or rolls [fol. 625] to fix a schedule of prices with respect to the public performance for profit of those records or rolls in the State of Florida?

Mr. Boggs: The question is objected to as incompetent, irrelevant and immaterial.

A. No, sir.

- Q. Now, have your comp-sitions appeared from time to time on the radio?
 - A. Yes, sir.
- Q. Have they been performed by other users of music as well?
- . A. Yes, sir.

Q. Have you heard them performed over any network of the National Broadcasting Company?

A. Yes, sir.

Q. And have you heard those compositions performed over the network of the Columbia Eroadcasting System?

A. Yes, sir.

Q. And have you heard those performances over the air frequently?

A. Yes, sir.

Q. Have you ever been to Florida?

A. Yes, sir.

Q. Have you, while in Florida, heard your compositions [fol. 626] performed by radio?

A. Yes, sir.

Q. Also in hotels?

A. Yes, sir.

Q. Also in restaurants?

A. Yes, sir.

Q. Can you tell us your most recent visit to Florida: when was that?

A. Last week.

Q. Can you tell us the names of the particular compositions you heard performed in Florida last week?

A. Yes, sir.

Q. Will you please state the names.

A. "Punchinello"; "It's a Blue World"; "A Pretty Girl is Like a Melody"; "Say It With Music"; "You'd Be Surprised." Do I have to go on!

Q. Yes.

A. "Pinocchio," and there were others.

Q. Were any of those songs that you have just mentioned performed over any radio broadcasting station in Florida?

A. Well, I heard most of them over the radio.

Q. And can you identify the particular radio station?

A. No, sir.

[fol. 627] Q. Now, let me direct your attention, Mr. Bornstein, to House Bill No. 1103, the New Florida Law of 1939, particularly to Section 2, which reads as follows:

"Section 2. It shall be unlawful for any person to sell, license the use of, or in any manner whatsoever dispose of, in this state, the performing rights in or to any musical composition or dramatico-musical composition which has been copyrighted, and is the subject of a valid existing copy-

right, under the laws of the United States, or to collect any compensation on account of any such sale, license, or other disposition, unless such person:

- "(a) Shall first have filed with the Comptroller on forms prescribed by the Comptroller a list describing each such musical composition and dramatico-musical composition. the performing rights in which said person intends to sell. license or otherwise dispose of in this state, which description shall include the following: The name and title of the copyrighted composition, the date of the copyright, the number or other identifying symbol given thereto in the United States copyright office, aname of the author, the name of the publisher, the name of the present owner of the copy-[fol. 628] right to said composition, and the name of the present owner of the performing rights thereto. Additional lists of such copyrighted compositions may be filed by any such person from time to time, and shall be subject to all the provisions of this Act. A filing fee of two cents a composition shall be required by the Comptroller for filing any list under this Act.
- "(b) Shall simultaneously file an affidavit which shall describe the performance rights to be sold, licensed or otherwise disposed of and shall state that the compositions so listed are copyrighted under the laws of the United States, that the facts contained in the list to which said affidavit relates are true, that affiant has full authority to sell, license or otherwise dispose of the performing rights in such composition; and the affidavit shall set forth the name, age, occupation and residence of the affiant; and if an agent, the name, occupation and residence of his principal."

I now ask you, Mr. Bornstein, having heard the section read, whether you could compile the list described here in this section.

A. I don't think I could.

Q. Can you tell us why?

[fol. 629] A: Well, do I understand your question correctly to state that I have to make a compilation of all the numbers I have published?

Q. Would you desire to make available to the user in

Florida such a list?

A. Well, that is, all the numbers?

Q. Yes, that is right.

A. What else must I do?

Q. Then in compiling the list, you have to give the name, title of the composition, date of the copyright, the number or other identifying symbol given by the United States Copyright Office, the name of the author, the name of the publisher, the name of the present owner of such composition, the name of the present owner of the performing rights thereto—

A. I could do that to some extent, of course; but it would be an awfully difficult job. It would be something that I could not give accurately. I could never swear to the accuracy of that kind of a compilation.

Q. Could you make an affidavit to that compilation?

A. No, sir

Q. What do you estimate the cost would be to make such a compilation of your catalogue?

[fol. 630] Mr. Boggs: I object; no proper foundation has been laid for the question.

A. I have no idea.

Q. Now, could you make an affidavit at the present time with respect to your compositions that your publishing firm is the present owner of the performing rights in such compositions and has full license to sell or otherwise dispose of same?

A. Do I understand you correctly to say where our com-

pany owns the performing rights?

Q. No. Could you make an affidavit to the effect that your company now owns those performing rights and can license them?

A. No, sir.

Q. Who owns those rights today?

A. Well, there is a question as to who owns them.

Q. The question is between whom?
A. The writer and the publisher.

Q. But who, as a practical matter, disposes of those rights today?

A. The publisher, the copyright owner.

Q. To whom does he dispose of them?
A. To ASCAP.

Q. And is ASCAP the one who licenses these rights? [fol. 631] A. Yes, sir.

Q. Now, could you prepare a schedule of prices for the public performance for profit of your compositions in the State of Florida with respect to establishments or users in the State of Florida at the present time?

A. Will you repeat that, please.

Q. Could you prepare a schedule of prices for the performing rights of your compositions with respect to the users of Florida?

A. No. I could not.

Q. What information would you have to have if you tried to prepare a schedule of prices for the users in Florida?

A. Well, I would have to know the different prices to charge for the different compositions, because certainly one composition may be worth more than another.

Q. Would you also have to have information with respect

to the users of the establishment?

A. I certainly would; whether it is a large, important establishment or an unimportant use.

Q. Would the fluctuation in the business of these users have a bearing on the price to be charged?

A. Definitely so.

Q. Could you at this time fix definitely a price for the [fol. 632] public performance for profit of your compositions in Florida with respect to television?

A. No, sir.

Q. Have you available any information with respect to television?

A. None.

Q. Could you at this time fix a price for the public performance for profit of your compositions in the State of Florida with respect to some of the uses that might be made, mechanical or otherwise, in the years to come?

A. No, sir,

Mr. Froblich: You may cross-examine.

Cross-examination.

By Mr. Bennett:

Q. I wonder if you would amplify slightly the term

"plug." stating just what it includes.

A. Plug means to get the material of the musical composition in presentable form for artists or instrumentalists to use, and then the contact man or salesman or representative demonstrates the song, or shows the song to the artist.

Q. Does Irving Berlin, Inc. urge artists, broadcasting

stations and other users to perform their musical com-[fol. 633] positions?

A. I would say that they do not urge; I would say that

they show true merchandise.

Q. Isn't it a fact that Irving Berlin, Inc., maintains in its plugging department contact men who go around to the NBC and Columbia studios here in New York, and other broadcasting companies, requesting the performance of

Irving Berlin numbers?

A. Let me answer it this way. They'd go around and contact the artist, and they'd follow up that artist, because of first showing their song to that artist—and usually the artist has some querry, or some question, or a request for a change of arrangement of some certain thing in connection with the artist desiring to sing the song, who suggests these things to the contact man from keeping in contact with the artist.

Q. Does he not also call on the programming department of various broadcasting stations requesting that they include certain numbers which Irving Berlin desires to plug to those in control of the programs of the stations?

A. Yes, sir, only if they have shown them the song first—shown the song first to the artist or the program builder—and request a follow-up as to the date he will do it or may do it.

[fol. 634] Q. But they do urge the station to include par-

ticular songs in programs, do they not?

A. When you say "urge," do you mean to say urge contrary to the wish of the one that is to sing it, or do you mean they contact them, showing them the merchandise and then ask them when they are going to sing it? In other words, I mean this: speaking very plainly, if I may—

Q. We want facts. The Court doesn't understand the

meaning of the special terms.

A. We are in the business to publish music and receive from the publications all the revenue we can. The artist is in his business to sing or play music and he must have me and, necessarily, I must have him. Now, you can change that about any way you choose as to the contact. That's it.

Q. Don't you know, as a matter of fact-

A. When I say—please let me finish—when I say must have him, I don't mean to say that we could not do without him, because we could—we did very much better without him before radio than since radio.

Q. Don't you know that, as a matter of fact, in the preparation of programs to be broadcast over the air, the Program Department of the National Broadcasting Company prepares a program for the station there in that network, [fol. 635] and that the Program Department of the Columbia Broadcasting System prepares a program for the Columbia Broadcasting System?

A. Not always; in rare instances.

Q. In most instances?

A. As a rule, no; I would not say in most instances. I would say, as far as my experience goes, that the program is invariably arranged, if it is a sponsored program, by the sponsor's representative, and if it is a sustaining program, by the orchestra leader or the vocalist.

Q. Don't you know that that is in conjunction with the

Program Department of the respective stations?

A. No, I don't understand that. I understood you to say that the broadcasting Program Department made the programs up of their own choosing.

Q. That is true.

A. I do not know that to be a fact.

Q. Is it not a fact that Irving Berlin rends letters all over the United States to Broadcast stations requesting the performance of particular numbers which they desire publicized?

A. That is not true. They send letters all over the United States calling the attention of all singers and instrumentalists as to he merchandise that they have to offer for [fol. 636] their consideration.

· Q. Are not those letters sent directly to the broadcast stations throughout the United States? and not to the singers?

A. It may be possible, but I am inclined to believe that our company does not do that; I believe with our company it is sent to the artist or the orchestra leader.

Q. Is it not a fact that Irving Berlin, Inc. sends such letters to broadcasting stations located in the State of Florida, requesting the performance of particular numbers?

A. It may very well be, but I have no recollection of the letters going to the stations. My instruction has always been to contact the singer or the orchestra leader. But you may be right.

- Q. Are you a member of the Board of Directors of ASCAP?
 - A. Yes.
 - Q. How long have you been a Director?
 - A. Since 1919.
- Q. Are you on any committee of ASCAP, such as the Rate Committee or Membership Committee?
 - A. Yes, sir; I am on the Foreign Relations Committee.
 - Q. What other committees are you on?
 - A. No other.

[fol. 637] Q. Does Irving Berlin, Inc. sell the recording rights to motion picture producers for incorporation on the sound track?

A. That would be known as synchronization rights; we license some of our work for synchronization use of motion picture producers.

Q. How do you determine the price to charge a motion picture producer for the right to record a particular number?

A. We take into consideration the importance of the composition and the importance of the use.

Q. In each case you determine the factors surrounding the particular number?

A. Yes, sir.

Q. And determine the price which you are to charge a producer; is that correct?

A. That is correct. I want to amplify this answer, by saying that this is with respect particularly to vocal rendition. As to what is called an atmospheric instrumental use, there is generally about the same price charged.

Q. When you say atmospheric instrumental use, do you mean what is commonly called background music?

A. Yes, sir; of that nature.

Q. Does Irving Berlin, Inc. license the recording rights to record on electrical transcriptions?

[fol. 638] A. Yes, sir.

Q. How do you determine the price to charge for the electrical transcription recording?

A. Well, we charge on electrical transcription, for a production number, I think it is 50 cents, and for a non-production number 25 cents.

Q. Is that price uniform?

A. I think so.

Q. How did you come to decide on that price?

A. That was, I think, at the suggestion of the electrical transcribers at a meeting that I attended many years ago.

Q. Are you referring to the meeting which took place in

A. It may have been 1930.

- Q. Is Irving Berlin, Inc. a member of the Music Publishers Protective Association?
 - A. Irving Berlin, Inc.? Q. Irving Berlin, Inc.

A. It is now a member.

Q. Was it a member in 1930?

A. I think so, but for a period of time, in between 1930 and today, they were not members of the MPPA; I don't remember the exact years.

Q. Were you a member of the Board of Directors of the [fol. 639] Music Publishers Protective Association?

A. Yes.

Q. Were you at any time—Question withdrawn.

Q. Were you a member of the Board of Directors in 1930?

A. I think I was.

Q. As a member of the Board of Directors, do you recall a meeting of the Music Publishers Protective Association in 1930, at which the question of licensing electrical transcriptions was discussed?

A. No.

Mr. Frohlich: I object to that as incompetent, irrelevant and immaterial and not within the issues here.

The Witness: I don't remember.

Q. Do you recall any discussions at that time-

Mr. Frohlich: Same objection.

Q.—with regard to the determination of the price to be charged electrical transcription companies for the privilege—

A. No.

Q. -of recording-

A. You're not-

Mr. Frohlich: Same objection.

[fol. 640] A. You are not speaking now of the Board of Directors of the MPPA?

Q. Yes, sir.

A. No, sir.

Q. Let me put the question in another way. Do you recall a meeting or meetings attended by the leading publishers of popular music at which the price to be charged electrical transcription manufacturers was discussed?

Mr. Frohlich: Same objection.

Mr. Bennett: What is your answer?

A. No, I don't recall that. I have a recollection of having talked to the electrical transcribers, but I don't remember if any publishers were present at that time.

Q. Do you know Mr. John Payne?

- A. Yes, sir.
- Q. Was Mr. John Payne chairman of the Board of Music Publishers Protective Association?

A. Yes, sir.

Q. Do you know when he became chairman of the board?

A. No, sir; I don't remember.

Q. Do you recall whether he was chairman of the board in 1930?

A. I don't recall that; either he was or E. C. Mills was, but I don't remember which one.

[fol. 641] Q. Do you recall any meeting you attended with Mr. John Payne at which the price to be charged electrical transcription manufacturers was discussed?

Mr. Frohlich: The same objection.

A. No, I was not; I don't recall.

Q. You stated that a charge of 50 cents per production number is charged electrical transcription manufacturers?

A. I believe so.

Q. Is that 50 cents to transcription manufacturers for rendition of each transcription, or does it cover the entire-recording?

A. Well, they might—

Mr. Finkelstein: I wonder if you could tell me the relevancy of this.

The Witness: Can this be off the record for a minute?

Mr. Bennett: Yes.

(Discussion off the record.)

A. I have no personal knowledge of it, as that is handled by a special department.

Q. Mr. Bornstein, when you copyright a musical composition do you receive a card or other evidence of copyright from the Copyright Office in Washington?

[fol. 642] A. Yes, sir.

Q. What form is that in: is it a card or what?

A. It is a card; yes, sir.

Q. What do you do with those cards after you receive them?

A. We have them; they keep them.

Q. You keep them in a card index file?

A. In a card index file; yes, sir.

By Mr. Boggs:

Q. Reverting back to these plug agents that you said your company, Irving Berlin, Inc., makes use of to contact artists—

A. That's right.

Q. —do you have them only in New York City or do you have them in other places as well?

A. We have them in other places as well.

Q. A number of other places, or just a few?

A. A few.

Q. And are those people employees of your company?

A. Yes, sir.

Q. Can you recall some of the places where you have them?

A. Certainly. We have one in Chicago, one in Hollywood, one in Boston, one in Cleveland; I think that is all of them. [fol. 643] Q. And those people, I presume, must be familiar with all the important parts of your catalogue, the plug agents?

A. Yes. Those people are particular-familiar with the current catalogue and have a fair knowledge of the general catalogue, a fair knowledge.

Q. And they make their own contacts with the producers or the renderers of the music, the artists?

A. The artists, yes.

Mr. Boggs: That is all. Mr. Bennett: That is all. Mr. Frohlich: That is all.

(Witness excused.)

George W. Meyer, called as a witness in behalf of the Complainants, having been first duly sworn, did depose and say:

Direct examination.

By Mr. Finkelstein:

Q. What is your name and address, Mr. Meyer? A. George W. Meyer, 205 West 57th Street.

[fol. 644] Q. New York City?

A. New York City.

Q. What is your occupation or profession?

A. Songwriter.

Q. Do you write the lyrics or the music?

A. The music.

Q. How many years have you been a composer?

A. About 35 years.

Q. I show you what purports to be a list of composi-

A. No, about 30 years.

Q. —of George W. Meyer, and ask you whether those compositions are works of which you composed the music.

A. Do you want me to look at every title?

Q. Well, you just glance through it and see if those are you-compositions.

A. I guess these are mine. Whether that is a complete list or not I don't know.

Q. Are the works listed on this list your works?

A. Yes.

Mr. Finkelstein: I offer the list in evidence.

Mr. Boggs: No objection.

(List received in evidence and marked Complainant's Exhibit 10 of this date.)

[fol. 645] Q. Can you tell us some of your more popular compositions?

A. "For Me and My Gal"; "When You're a Long, Long Way From Home"; "My Mother's Rosary"; "Tuck Me To Sleep in My Old Kentucky Home"; "Everything is Peaches Down in Georgia"; "Brown Eyes, Why Are You Blue?" "Tenn, Tenn, Tennessee"; "Sitting in the Corner"; "I Believe in Miracles"; "Song of the Nile." Is that enough?

Q. Yes. Did you have any composition the sales of which

were in excess of a million copies?

A. Several. "For Me and My Gal" sold about three million copies. "Tuck Me to Sleep in My Old Kentucky Home" sold three million copies, or around that. Most of those all sold over a million copies.

Q. About what was the sale of "When You're a Long,

Long Way From Home"?

A. About 1,200,000 or 1,300,000 copies.

Q. Now, when were those compositions published; can you give us the years when some of those compositions were published?

A. "For Me and My Gal"-I'll be within a year of it-

Q. Take first those before 1923. You can use Plaintiffs' Exhibit 10 to refresh your recollection, as to some of your hit numbers published before 1923.

[fol. 646] A. "For Me and My Gal," that was in 1917. "Tuck Me to Sleep in My Old Kentucky Home," that was

in 1921. "My Mother's Rosary," that was in 1915.

Q. What would you say was the average sale in sheet music of your hit numbers before 1923, hit numbers of the type you have just mentioned?

A. Oh, I would say they would average about 1,500,000

copies.

Q. Have you had hit numbers since 1923?

A. Oh, yes.

Q. What has been your experience with respect to the number of sales of sheet music since 1923 down to the present time?

A. Oh, no comparison. For instance, "I Believe in Miracles," which was quite a hit, it was considerable of a hit enough, that in the old days, well, you would have said that song would have sold a million copies; yet I sold only 110,000 copies.

Q. What year was that?

A. 1930. Then in 1929, I think it was 1929—I will make sure—No, in 1932, "I am Sure of Everything But You," that was quite a hit, and that only sold about 115,000 copies.

Q. Were those songs listed or represented on the Lucky [fol. 647] Strike survey?

A. Oh, yes.

Q. Did they attain Number One popularity on that list?

A. They certainly did.

Q. Is the Lucky Strike survey considered an accurate survey of the popularity of musical compositions?

A. I think it is considered an accurate one.

Q. Are you familiar with the sales generally of music in the profession, that is, music composed and written by other authors?

A. To some extent.

Q. Were the sales of sheet music before 1923, that you say were characteristic, your own compositions, similar with respect to hit numbers of other composers and authors?

Mr. Bennett: I object to that. It calls for information not shown to be within the personal knowledge of the witness. It is hearsay.

The Witness: Shall I answer?

Mr. Finkelstein: Yes.

A. Well, of course, I could not say in actual figures, but from songwriters talking to each other, telling each other information, they average about the same. In fact, I know of one song that has passed a sale of five million copies, [fol. 648] called "Till We Meet Again," which was not my song, and it is common knowledge in the music business.

Q. Are you familiar with the number of copies of sheet

music of hits sold at the present time?

A. Very well.

Q. Do you know what the average, how many copies the average hit song sells today?

Mr. Boggs: Same objection.

A. The average hit song today has to be a pretty good hit to sell around 250,000 copies. There have been a few of these in the last year that have sold as high as 600,000 copies, but the average is 250,000. That is considered very good.

Q. Would that correspond with what the average was

in the period before 1923?

A. It would not correspond at all.

Q. What I mean by my question is, how many copies of sheet music of a corresponding hit number would sell prior to 1923?

Mr. Boggs: Same objection.

A. You mean songs that sell around 250,000?

Q. That is right; that attained the same popularity.

A. Those would be million copy songs; those that go 600,000 would be two and a half or three million.

[fol. 649] Q. There has been a considerable decline in the sales of sheet music since 1923?

A. It is almost nothing; one or two thousand in a song

now is terrific.

Q. What did your royalties net you in the period prior to 1923?

A. Well, they were considerably more than at present.

Q. What has been your experience with respect to royalties from the socalled mechanical rights?

A. You mean recently?

Q. Well, say back before 1923.

- A. They used to be terrific; almost as big as the sheets.
- Q. You mean the revenue from mechanicals was about the same as the revenue from sheet music?
 - A. I know on my slip I had over 3,000,000 records.

 Q. Was that representative of what you had on—

A. No, that was an exceptional case.

Q. Was "Tuck Me to Sleep" the number you said you had about 3,000,000 copies of sheet music?

A. Yes.

Q. About what would the ratio be between the sales of records and sales of sheet music for the average song, that is, take a hit number that sold a million copies, will you tell us about how many.

[fol. 650] A. Sheet music would always be just a little more.

Q. The sales on sheet music would be greater than mechanicals?

A. Yes; a song might sell 1,500,000 copies and you would have 1,000,000 records. And if it happened to be an instrumental type song, it would sell more records than sheet music.

Q. Now, what is the situation today?

A. The situation today is, I have had some phonograph statements for \$1.12, \$12, \$27,—things like that.

Q. Would you know how many records that would represent? Can you reduce that to how much it would make it per record?

A. We get 50 per cent of a cent and a quarter, to be divided among two or three writers, according to how many there would be who wrote that song.

- Q. And your total record royalties from certain compositions would be the figures you just mentioned at the present time; is that it?
 - A. Yes.
- Q. Does that represent the general decline in the revenue from the licensing of mechanical rights?

A. Say that again.

Q. Does that represent the general decline that there [fol. 651] has been in the revenue from the licensing of mechanical rights for phonograph records?

Mr. Boggs: The question is objected to on the ground that the witness is not shown to be qualified to answer it.

A. Yes.

Q. That has been your experience; you have written a great many songs?

A. Between 500 and 600.

Q. Over the past 30 years?

A. Yes.

Q. Do you know of any song in recent years that has sold a million copies by any composer or author?

A. What do you mean by recent years; how recent?

Q. Say within the past five or six years.

A. Nothing like it at all.

Q. On what factors, from your observation of the music profession, do you attribute the reduction in the sales of sheet music and mechanical royalties to?

A. The radio.

Q. In what respect does the radio affect the sales of sheet music and mechanical royalties?

A. Because it is unnecessary to buy them, because all you do is go home and turn on the switch and you have [fol. 652] music for hours.

Q. And have you observed the length of time during which a song is popular at the present time as compared with the period prior to 1923?

A. Yes, I have.

Q. What has been your observation in that respect?

A. Oh, between six weeks and three months. An exceptional song would last maybe three months, the average song six weeks.

Q. That is at the present time. What was the life of a

song prior to 19231

A. Oh, a year, a year and a half.

Q. Can you tell us what factors have been responsible for the shortened life of a song?

A. The same fact, continuous use on the radio.

Q. You say the constant repetition on the radio affects the life of a song. Will you tell us how that happens?

A. What do you mean, how that happens?

Q. From your knowledge of music and the factors that make music popular, and so forth, please tell us why.

A. The fact that they are repeated so often, pounded so often. The orchestra leader himself gets sick of playing it too long.

[fol. 653] Q. Does the constant repetition of songs affect the desire of the listener to have the song played?

A. It must, because they don't buy it.

Q. Under your practice with the publishers of your compositions, does your publisher agree to pay you anything for the right of public performance for profit?

A. No.

Q. Do you assign that right to your publisher!

A. No.

Q. Have your contracts with your publisher been oral, in writing, or will you tellens how your contracts have been made?

Mr. Bennett: I object. The contract is the best evidence.

A. When I was with Watterson, Berlin & Snyder, I never had a contract; we just did business on our word. I was with him two or three years.

Q. Approximately how many songs did you turn over

to Watterson, Berlin & Snyder on that basis?

L. I should say between 30 and 40.

Q. Is Watterson, Berlin & Snyder still in business?

A. No, Watterson is no longer alive.

- Q. Is Watterson, Berlin & Snyder a corporation? [fol. 654] Were they?
 - Q. Yes.

A. I could not say.

Q. What happened to that business?

A. Their catalogue is now in the possession of Jack Mills, except the numbers that Berlin wrote, which he bought from Watterson.

Q. Do you know whether they went into bankruptcy?

A. Yes, they went into bankruptcy.

Q. Have you turned over compositions to any other publisher under an oral agreement?

A. Very often.

Q. Have you transferred to any of your publishers your right for public performance for profit?

A. No.

Mr. Bennett: Same objection.

Q. Are you a member of the American Society of Composers, Authors and Publishers?

A. Yes.

Mr. Finkelstein: May we stipulate that the contract between Mr. Meyer and the American Society of Composers, Authors and Publishers is identical with Plaintiffs' Exhibits 2 and 4 in evidence.

Mr. Boggs: Yes.

[fol. 655] Q. Have you ever been in the State of Florida? A. In 1923.

Q. Did you hear your compositions played in that State? A. I'll tell you truth, I didn't pay much attention; I was very ill at the time.

Mr. Bennett: There wasn't any broadcasting at that time. Mr. Finkelstein: I didn't say broadcasting.

The Witness: I was laid up most of the time.

- Q. Are your compositions being performed by the national networks of the National Broadcasting Company and the Columbia Broadcasting System and the Mutual Broadcasting System?
 - A. They are.
- Q. Are those performances being made constantly?

A. They are.

Q. Can you at the time your compositions are written or published determine a price for performances and for all uses in the State of Florida?

Mr. Boggs: The question is objected to as incompetent and irrelevant, and not being required by the terms of the statute.

A. I have to give it under oath, but I don't know now [fol. 656] I could do it, offhand. I think I would have to consult an attorney and the collaborators of my songs and the publishers.

Q. Do you know when a song is written or published what popularity that song will attain?

A. I do not.

Q. Would the prices you would charge for the performances be the same in all 367 places that now are licensed by the American Society of Composers, Authors and Publishers in the State of Florida? Or would your price, if you could fix one, be different for each of those places?

A. I think it would have to be different.

Q. Would you have to make an investigation of each of those places to determine the price to be charged?

A. I certainly would.

Q. Would you have to consult with your collaborators and publishers after having made that investigation to attempt to fix a price?

A. I would have to.

Q. Could you, after that investigation was made, fix a price that would be effective for the future, or would your price have to be limited to the conditions that your investigations determined at the time of your particular investigation?

[fol. 657] A. To the investigations I made at that particular time; and by that time my song might not be of any value; and when I finished with that I would have to go

through with it again on a new song.

Q. Would you take into consideration the number of persons present at the performances?

A. Certainly.

Q. In fixing a price?

A. Certainly.

Q. Would you want to take into consideration the admission charged, if any?

A. Yes.

Mr. Boggs: The question is objected to on the ground that the questions are obviously leading.

Q. Can you state some of the other factors that would have to be taken into consideration?

A. I would have to take into consideration the type of performance, the type of band, the size of the place and, as you said, the price of admission, and I would have to give that under oath. I know that I would have to have an organization of some kind; I would have to organize something, I wouldn't know how I could do it alone.

Q. Are you financially able to establish the organization that would be necessary?

[fol. 658] A. No, I am not.

Q. Have you had any experience in the business field in licensing your works?

A. No, I haven't.

Q. Has your occupation been solely that of a composer?

A. That is all.

Q. What is your main source of income at this time?

A. The American Society of Composers, Authors and Publishers, is almost the only source that I have. Without the American Society of Composers, Authors and Publish-

ers I guess I'd be driving a cab or something. I may be too old for that, though.

Q. Are you financially able to send an investigator into each of the establishments in the State of Florida to determine whether or not they are performing your works?

A. Heavens, no.

Mr. Boggs: I object to the question on the ground it is irrelevant and immaterial.

Q. When did you become a member of the American Society of Composers, Authors and Publishers?

A. In 1914.

Q. Prior to that time did you receive any income from the licensing of public performances for profit of your [fol. 659] musical compositions?

A. No.

Mr. Boggs: The question is objected to on the ground it is irrelevant and immaterial.

Q. Did any user of your compositions for public performance for profit ever ask you for a license to perform your works?

A. Never.

Mr. Boggs: The same objection.

Q. Or offer to compensate you for receiving such a license?

Mr. Boggs: Same objection.

A. No.

Q. Did you ever know of any users to ever offer any compensation to any composer, author or publisher for the

public performance for profit of any musical composition prior to 1914?

A. No, never; I have never known of any.

Mr. Boggs: Same objection.

Q. When for the first time did you begin receiving any compensation for the public performance for profit of any of your compositions?

A. 1921.

Q. From whom did you receive such compensation? [fol. 660] A. ASCAP.

Q. Have you been in receipt of such compensation regularly from ASCAP since 1921?

A. Every quarter.

Q. What did you receive from the Society on an average annually for the last five years?

A. I guess on an average of \$14,000 a year.

Q. What have been your average royalties from the sale

of sheet music during each of those five years?

A. Oh, some years nothing; some years a thousand or two; average two or three hundred dollars a year for the five years.

Q. In mechanical royalties?

A. Oh, much less; maybe \$40 a year.

Q. What did you receive on an average per year before

1923 from the sales of sheet music?

A. Well, that would vary greatly. If a song sold 3,000,000, if you had that in one year, then you had a million copy song the year before, or two million copy song—I have earned as high as \$250,000 on one song, "Tuck Me to Sleep," and that was three ways—there were three writers on that, two lyric writers and a composer.

Q. So that the total receipts by the composer and authors

for that one song was \$150,000?

[fol. 661] A. Right. Of course, that includes mechanicals.

Q. What would you say was the minimum that you would receive annually around that period prior to 1923?

A. Oh, about \$30,000.

Q. Would you be willing to permit a publisher of your compositions to determine and fix a price to be charged for the use and rendition of your musical copyrighted compositions for the use of public performance for profit?

Mr. Boggs: That is objected to as irrelevant and immaterial.

A. No, I would not.

Q. Does your publisher have that right?

A. No.

Mr. Boggs: I object to that on the ground as stated above, and on the further ground that it involves a conclusion of law.

Q. Do you consider your contract with the American Society of Composers, Authors and Publishers a valuable contract?

A. Very valuable.

Q. Are you willing to have that contract cancelled?

A. No, No, I should say not.

Q. Have you renewed any of the copyrights for any of the compositions that you have published? [fol. 662] A. Yes, I have.

Q. Have you any idea of the number that you have re-

newed?

CE 83

A. Oh, possibly 50 or 60; none of the really important

ones yet.

Q. Do you expect to enter into negotiations with respect to the renewal rights of your compositions as and when those renewals come into existence?

Mr. Boggs: I object to the question as conjectural, and irrelevant and immaterial.

A. I do.

Q. If under the provision of this Florida statute the purchaser of any sheet music during the original term of copyright acquired the right to perform and make other uses of that composition upon buying a sheet of music, and that interefered with your renewal term of copyright, if the right acquired by the purchaser of sheet music in Florida extended to the entire renewal term as well as the original term—

Mr. Bennett: I object to the question on the ground it calls for a conclusion of law.

A. I don't know what that means.

Mr. Bennett: Further, that the statute does not provide any such procedure.

[fol. 663] Q. I call your attention to Section 2-A of the 1939 Florida Law, Senate Bill No. 679, reading as follows:

"Section 2-A. All authors, composers or publishers, and their heirs, successors or assigns, shall speecify or cause to be specified legibly upon the musical composition, in whatever form the same may be published, printed, manufactured or otherwise prepared for use or rendition, the selling price thereof so arrived at and determined for all uses and purposes; and when any purchaser or uses acquired the same within this state and pays the selling price so specified thereon to the seller or publisher of such musical compositions, then said purchaser may use or render, or cause or permit to be used or rendered, the said copyrighted musical composition by persons individually or with other performers, actors and singers, or by an individual instrument player, or by orchestras and bands, or over or through or by means of radio loud speakers, radio receiving, radio broadcasting and radio re-broadcasting stations, electrical transcriptions, musical records, sound apparatus or otherwise, and the same may be so rendered either privately or publicly for profit without further license fees or other exactions; and such copyright owner or proprietor in such [fol. 664] event shall be deemed to have received full compensation for the rendition and all uses of such musical compositions for private and public performance for profit."

Now, bearing in mind the provisions of Section 2-A, which I just read to you, which permits the purchasers of any copy of a musical composition upon paying the price specified on the composition to use it, render it, cause or permit to be used or rendered, the copyrighted composition without further license fees or other exactions: would that affect your negotiations for the renewal of the contract, the fact that purchasers in Florida have the right to continue to make performances without payment of any further fee on copies of sheet music bought before the expiration of the original term, would that affect your negotiations with respect to the second term of copyright secured by you under your renewal?

Mr. Boggs: It is objected to on the ground that it is incompetent and calling for a conclusion of law.

A. Well, I don't know whether I understand the question, but it would not affect renewal or affect the renewal in any way. The songs come back to me after 28 years, but making a price on that sheet of music from then on, I would

[fol. 665] not know what to charge for the thing.

Q. Does your publisher at this time have any right to grant any rights whatsoever that extend into the renewal term of copyrights? Do you understand the question?

A. No.

Q. Does the publisher of any of your compositions during the original term of copyright have any right to enter into any transactions which affect the rights under the copyright for the renewal term, for the second term of 28 years?

Mr. Boggs: Same objection, calling for a conclusion.

A. Do you mean before the copyright is out, before the first term?

Q. Before the first term expires.

A. He still has the rights on the contract, hasn't he, the right to print?

Q. Why?

Mr. Finkelstein: Off the record.

(Question read by the reporter.)

A. Of course not.

Q. Can you estimate the value of all of your renewal rights on all of your compositions?

A. I have never thought about it, but I consider them [fol. 666] invaluable. You mean you want me to put a figure in dollars and cents?

Q. Yes, based upon the advance royalties currently being paid for renewals and considered valuable in your catalogue.

A. It must be between \$100,000 and \$150,000; I would value them to be that.

Q. Now, I call your attention to Section 2 of the 1939 law, which reads as follows:

"Section 2. It shall be unlawful for any person to sell, license the use of, or in any manner whatsoever dispose of, in this state, the performing rights in or to any musical composition or dramatico-musical composition which has been copyrighted, and is the subject of a valid existing copyright, under the laws of the United States, or to collect any compensation on account of any such sale, license, or other disposition, unless such person:

- "(a) Shall first have filed with the Comptroller on forms prescribed by the Comptroller a list describing each such musical composition and dramatico-musical composition, the performing rights in which said person intends to sell, license or otherwise dispose of in this state, which description shall include the following. The name and title of the [fol. 667] copyrighted composition, the date of the copyright, the number or other identifying symbol given thereto in the United States copy right office, the name of the author, the name of the publisher, the name of the present owner of the copyright to said composition, and the name of the present owner of the performing rights thereto. Additional lists of such copyrighted compositions may be filed by any such person from time to time, and shall be subject to all the provisions of this Act. A filing fee of two cents a composition shall be required by the Comptroller for filing any list under this Act.
- "(b) Shall simultaneously file an affidavit which shall describe the performance rights to be sold, licensed or otherwise disposed of and shall state that the compositions so listed are copyrighted under the laws of the United States, that the facts contained in the list to which said affidavit relates are true, that affiant has full authority to sell, license or otherwise dispose of the performing rights in such composition; and the affidavit shall set forth the name, age, occupation and residence of the affiant; and if an agent, [fol. 668] the name, occupation and residence of his principal."

Bearing that section in mind, I wish to ask you some questions.

- A. That would take me the rest of my life to do, if I went through this and gave you the history of each song and everything.
 - Q. Have you composed any dramatico-musical works?
 - A. No.
- Q. Have any of your songs been incorporated or interpolated into dramatico-musical compositions?
- A. Yes, a few dramatico-musical compositions for use with pictures.
- Q. Have some of your songs been incorporated in motion pictures?
 - A. Yes, quite a lot.

3

Q. Can you name some of the songs that have been in-

corporated in pictures?

A. "Song of the Nile," "Maybe It's Love." Those were the only two that were hits. The others were written just specially for the picture.

Q. Can you make an affidavit that you have full authority to sell, license or otherwise dispose of the performing rights of your compositions?

Mr. Boggs: I object to that on the ground that the wit-[fol. 669] ness has testified that he transferred his copyrights to his publishers.

A. I have already transferred my performing rights to the ASCAP. Is that your question?

Q. That is your answer?

A. I mean-I hope I got your question right.

Q. Yes, you got the question right.

- A. Pardon me. Can I elaborate on that a little? Any song that I give the publisher, the contract that I sign with them, states that they have all rights except that which has been given to ASCAP, which are the performing rights.
- Q. Is that pursuant to the provisions of the standard form of contract?

A. The standard form of contract.

Q. Was such an understanding made with respect to those compositions?

A. Which were published under——

Q. Oral contracts. Did the publishers of your compositions who obtained publication rights under oral contracts receive any interest in the performing rights?

A. No, they did not.

Q. Does anyone other than your publisher and yourself and sometimes the Society have any interest in your copy-[fol. 670] rights?

A. No.

Q. Your collaborator?

A. Oh, my collaborators have, yes.

Q. Do you know where all of your collaborators are located at this time?

A. No, I do not.

Q. Have you had a great number of them over the years?

A. Yes; some of them are dead.

Q. Do you know who their heirs are or who the people are who succeeded to their rights in all cases?

A. No, I do not.

Q. Would you be able as an individual to issue licenses for the public performances of your works in the State of Florida, as an individual, apart from the American Society of Composers, Authors and Publishers?

A. I don't see how.

Mr. Boggs: I object to that on the ground that it calls for a conjecture, and also that it is irrelevant and immaterial.

Q. I believe I asked you whether you had the means to investigate infringements of your works in the State of Florida.

[fol. 671] A. I have not.

Q. Are you willing to have your works which are broadcast from outside of the State of Florida into the State of Florida rebroadcast within that State without payment of any fee to you?

A. I certainly am not.

Mr. Boggs: I object on the ground that the statute does not so require.

Q. Are you willing to have any user of music in the State of Florida, in performing from phonograph records which are sent into that State from without the State, do so without a payment of a fee to you?

A. No.

Q. Are you willing to have the manufacturer of phonograph records affix a price which includes the right of public performance for profit in the State of Florida?

Mr. Boggs: I object.

A. By no means.

Mr. Boggs: The statute does not so require.

Q. Does the manufacturer of phonograph records have any right of public performance for profit in your works? A. No.

Q. Are you willing to permit that manufacturer to have [fol. 672] any such rights?

A. No.

Mr. Boggs: The same objection.

Q. Are you willing to permit the owners of motion picture theatres to exhibit motion pictures containing your musical compositions from films received in the State of Florida from without the State without the payment of a license fee to you?

A. No.

Mr. Bogga: The same objection.

Q. I call your attention to Section 4-A of the 1939 Law, which reads as follows:

"Section 4-A. It shall be unlawful for two or more owners of the copyrights of musical compositions or dramaticomusical compositions to associate or combine together in any manner, directly or indirectly, for the purpose of issuing blanket licenses for the public performance for profit of their compositions upon a blanket royalty fee covering more than one, or all, or such compositions owned or controlled by the members of such association unless each individual copyright owner included in such association, or such association in behalf of each individual copyright owner, also shall make available to each user of such com-[fol. 673] positions within the state, at the option of the user, the right to perform publicly for profit each such copyrighted musical composition owned by him or it at a price established for each separate performance of each such composition. To this end, there shall be filed with the Comptroller, either as a part of the list required by Section 2 hereof or as a separate document by such copyright owner, or by such association in behalf of such owner, a schedule of prices for the performing rights to each separate performance for profit of each such composition contained in such list, together with an affidavit of the copyright owner of such compositions that the price so stated has been determined by such copyright owner acting for himself and not either directly or indirectly in concert or by agreement with the owner or owners of any other copyrights. schedule of prices may contain reasonable classifications determined by use and function, or either, of the users of said compositions, with separate price for each classification, provided that there is equal treatment of all persons within each classification and that there is no unreasonable discrimination between classifications. Any copyright owner may at his election fix one price which shall be ap[fol. 674] plicable to each rendition of each of such compositions owned by him except to the extent that he elects
to name specific compositions and to fix other prices for
each rendition thereof, and said prices shall remain in force
and effect until a new schedule of prices with respect to the
performing rights to such compositions has been similarly
filed in the office of the Comptroller, at any time, at the election of such owner changes in prices to become effective
seven days from the date of filing thereof. The schedule
of prices provided for herein shall be made available by
the Comptroller to all persons for examination and the taking of copies, and may be published by him in the same manner as provided in Section 3 hereof."

Does the owner of the copyrights of your compositions have any right to fix a price for the public performance for profit in the State of Florida?

Mr. Boggs: I object on the ground that it calls for a con-

- Q. Are you willing to have the owner of a copyright exercise such a right?
 - A. No.
- Q. Are you willing to have blanket licenses issued in the [fol. 675] State of Florida only upon the condition that if any such license be issued all users in the State of Florida shall have an opportunity to perform at a specific price apiece?
 - A. No.
- Q. Could you as a practical matter prepare a list of prices to be paid for each performance of each composition by all the users in the State of Florida?
 - A. No, I could not.
 - Q. What would prevent you from preparing such a list?
- Mr. Bennett: The objection calls for—the question calls for a conclusion.
- A. I would have to get the right of every collaborator in the song and the publisher, where I have never thought in that direction. I know it would be almost impossible for me to do it. I would have to hire a lawyer. I would let you do it if I had to.
 - Q. Do you have to pay a lawyer if you engage one?

A. Would I have to pay one? Of course I would pay one if I engaged him.

Q. Would you have to engage a corps of investigators

for the State of Florida?

A. Certainly would.

Q. Would you have to hire a clerical staff? [fol. 676] A. I imagine I would.

Q. Are you in a financial position to do those things?

A. By no means. -

Mr. Bennett: I call attention to the fact that the questions are obviously leading.

Mr. Finkelstein: You may cross-examine.

Cross-examination.

By Mr. Bennett:

Q. Mr. Meyer, are you a member of the Board of Directors of ASCAP?

A. I am.

Q. Are you a member of any committee, such as the Membership Committee?

A. No; I am a member of the Foreign Relations Com-

mittee.

Q. Are you a member of any other committee?

A. No other committee.

Q. In connection with your direct testimony that you entered into contracts with various publishers, I hand you Plaintiffs' Exhibit No. 7, which is the standard uniform contract with popular songwriters, and ask you whether that is representative of the contracts which you have entered into with your publishers.

[fol. 677] Mr. Finkelstein: Is that the written contract that you are asking him about?

Mr. Bennett: Yes.

A. That was up to this year. We have a new one.

Q. This Plaintiff's Exhibit 7 is representative of the contracts you had with your publishers and which have been entered into up to about three months ago, is it not?

(Last two questions and answers were read.)

A. Yes.

Q. Now, have you entered into any different contract subsequent to three months ago?

A. Yes.

Q. Can you state how many?

A. How many what?

- Q. How many of those contracts you have entered into in the last three months?
 - A. How many songs?

Q. Yes.

A. About three or four.

Q. Can you furnish a copy of the form of contract used?

A. Yes.

Q. Will you do that?

A. I certainly will.

[fol. 678] Mr. Finkelstein: May I attach that contract as an exhibit when produced?

Mr. Bennett: Yes.

(By Consent the contract was deemed marked Defendants' Exhibit A of this date.)

Mr. Bennett: That is all.

Mr. Finkelstein: That is all.

(Witness excused.)

(An adjournment was taken to the following day, Friday, February 9, 1940, at 10:30 o'clock a. m.)

[fol. 679]

New York, February 9, 1940, 10:30 o'clock a. m.

Met pursuant to adjournment. Appearances: As before.

HERMAN GREENBERG, called as a witness in behalf of the Complainants, having been first duly sworn, did depose and say:

Direct examination.

By Mr. Frohlich:

Q. Where do you reside?

A. 15 West 81st Street, New York City.

Q. What is your occupation?

A. I am the assistant general manager of the American Society of Composers, Authors and Publishers.

Q. How long have you been so employed?

A. Oh, for all the years that I have been employed with the Society, for approximately 20 years I have been employed by the Society.

Q. In various capacities?

A. Yes, sir.

Q. What is the home office of the Society?

[fol. 680] A. The address of the home office of the Society

is 30 Rockefeller Plaza, New York City.

Q. What is the American Society of Authors, Composers and Publishers?

A. The American Society of Composers, Authors and Publishers is an unincorporated association, organized under the Laws of the State of New York.

Q. I show you this document and ask you whether you recognize it.

A. I do.

Q. What is it?

A. It is the Articles of the Association of the American Society of Composers, Authors and Publishers.

Q. And is that presently in force and effect?

A. Yes, sir.

Mr. Frohlich: I will offer it in evidence. Mr. Boggs: There is no objection to it.

(Articles received in evidence and marked Complainants' Exhibit 11 of this date.)

Mr. Frohlich: I will offer in evidence certified copy of Chapter 609 of the Laws of New York, known as the General Association Law, and particularly Section 12 of that Law.

Mr. Boggs: No objection.

[fol. 681] Mr. Frohlich: May it be stipulated that in place of the original I can substitute a photostatic copy of that and the certification.

Mr. Boggs: It is so stipulated.

(Photostatic copy of Chapter 609 received in evidence and marked Complainants' Exhibit 12 of this date.)

Q. I show you this document and ask you whether you recognize it.

A. Yes.

Q. What is it?

A. It is a printed list of the members of the Society and the foreign associates with whom the American Society is affiliated.

Q. Is that the latest list of members of the American So-

ciety of Composers, Authors and Publishers?

A. It is the latest printed list.

Q. What is the date of the printing of that?

A. April 1, 1939.

Mr. Frohlich: I offer it in evidence.

Mr. Boggs: No objection.

(List of members received in evidence and marked Complainants' Exhibit 13 of this date.)

Q. Now, Mr. Greenberg, I show you this document and [fol. 682] ask you what this is:

A. This is a document authorizing suits to be instituted in the name of Gene Buck, in the name of the Society.

Q. Do you recognize the signatures on that resolution?

A. Yes.

Q. Whose signatures are they?

A. George W. Meyer, secretary of the American Society of Composers, Authors and Publishers, and Gene Buck, its president.

Q. Is Mr. Meyer presently the secretary of the Society?

A. Yes.

Q. And is Mr. Gene Buck the president?

A. Yes, sir.

Q. Was this resolution duly adopted at a meeting of the Board of Directors?

A. Yes, sir.

Q. And have you taken this from your files?

A. Yes, sir.

Mr. Frohlich: I offer it in evidence."

Mr. Boggs: No objection.

Q. One thing more. Is this the seal of the American Society of Composers, Authors and Publishers affixed to Mr. [fol. 683] Buck's signature?

A. Yes, sir.

Mr. Frohlich: May we substitute a duplicate—original, as a matter of fact?

Mr. Boggs: No objection.

(Resolution received in evidence and marked Complainants' Exhibit 14 of this date.)

Q. Mr. Greenberg, I show you a number of agreements, documents purporting to be agreements between the American Society of Composers, Authors and Publishers and various foreign societies, and let me enumerate them specifically:

1. Document called an agreement between the American Society of Composers, Authors and Publishers and Circulo Argentino de Autores Circulo de Autores Y Compositores de Musica Argentores; known as the Argentino Society, dated January 1, 1935;

2. I show you a similar document with the Austrian Society, dated January 1, 1933, known as Gesellshaft der Autoren Komponisten und Musikverleger;

3. I show you a document and agreement between the American Society of Composers, Authors and Publishers and the Belgian Society, dated January 1, 1934, and known as the Nationale Vereenigung voor Auterecht (Navea);

[fol. 684] 4. I show you a document purporting to be an agreement between the American Society of Composers, Authors and Publishers and the Bulgarian Society, dated January 1, 1936, known as the Association Cooperative Bulgare pour la Portection des droits d'auteurs;

5. I show you a document purporting to be a contract dated January 1, 1933, between the American Society of Composers, Authors and Publishers and the Czecho-Slovakian Society, known as Ochranme Sdruzeni Autorske cse Skladatelu Spisovatdua Nakladatelu;

6. I show you a document purporting to be an agreement dated January 1, 1932, between the Davish Society and the American Society of Composers, Authors and Publishers, which Danish Society is known as Internationalt forbund Til Beskyttelse Af Komponistrettigheder Koda;

7. I show you a document purporting to be an agreement dated January 6, 1933, between the English Society and the American Society of Composers, Authors and Publishers, which English Society is known as the Performing Right Society, Ltd.;

- 8. I show you a document dated January 1, 1932, between the American Society of Composers, Authors and Com-[fol. 685] posers, and the Finnish Society, known as Saveltajain Tekyanoikeustoimisto Teosto;
- 9. I show you a document purporting to be an agreement dated January 1, 1933, between the American Society of Composers, Authors and Publishers and the French Society, known as La Societe des Auteurs, Compositeurs et Editeurs de Musique;
- 10. I show you a document purporting to be an agreement dated January 1, 1933, between the American Society of Composers, Authors and Publishers and the German Society, known as Genossenschaft Zur Verivertung Musikalischer Auffuhrungsrechte;
- 11. I show you an agreement between the American Society of Composers, Authors and Publishers dated January 1, 1932, and the Hungarian Society, known as Magyar Szovegirok Zeneszerzok Es Zenemukiadok Szovetkezete;
- 12. I show you a document purporting to be an agreement dated January 1, 1939, between the American Society of Composers, Authors and Publishers and the Italian Society, known as Societa Italiana Delgli Autori Ed Editor;
- 13. I show you a document purporting to be an agreement dated January 1, 1930, between the American Society of [fol. 686] Composers, Authors and Publishers and the Norwegian Society, known as Norsk Komponistforeningo Internationale Musikbyrd-Tone-Norway;
- 14. I show you a document purporting to be an agreement dated January 1, 1933, between the American Society of Composers, Authors and Publishers and the Portugese Society, known as the Sociedade De Escritores E Compositores Teatrais Portugueses;
- 15. I show you a document purporting to be an agreement dated January 1, 1932, between the American Society of Authors, Composers and Publishers, known as the Rumanian Society, known as Societatea Compozitorilor Roman:
- 16. I show you this agreement dated January 1, 1936, purporting to be agareement between the American Society of Composers, Authors and Publishers and the Spanish So-

ciety, known as Sociedad General de Autores de Espana (SGAE); on behalf of the Sociedad De Autores Cinematograficos (SAC), of the Sociedad Espanola Del Derechos De E Jecucion (SEDE), and of the Socieded De Autores De Variedades (SAV);

- 17. I show you this document purporting to be an agreement dated January 1, 1932, between the American So-[fol. 687] ciety of Composers, Authors and Publishers and the Swedish Society, known as Foreningensvenska Tonsattares Internationalla Musikbyra (STIM);
- 18. I show you this document dated January 1, 1932, between the American Society of Composers, Authors and Publishers and the Swiss Society, known as Association Suisse Pour La Representation Des Droits D'Execution (GEFA);
- 19. I show you this document purporting to be an agreement between the American Society of Composers, Authors and Publishers and the Brazilian Society, known as Sociedade Brasileira de Autores Theatraes.

(Discussion off the record.)

Mr. Frohlich: It is conceded that each and every one of the foregoing documents were executed respectively by the American Society of Composers, Authors and Publishers and the respective officers or representatives of the respective foreign societies.

These are offered in evidence, and they are received without objection, and it is further stipulated that photostatic copies of each and every one of these agreements with foreign societies will be received in place of the originals as [fol. 688] Plaintiffs' Exhibits 15-A to 15-T, inclusive.

(19 agreements received in evidence and marked Complainants' Exhibits 15-A to 15-T, inclusive, of this date.)

By Mr. Frohlich:

Q. Now, Mr. Greenberg, these contracts have been put in evidence as Plaintiffs' Exhibits 15-A to 15-T, inclusive. Are they presently in force and effect?

A. They are.

Q. Does the American Society of Composers, Authors and Publishers issue any licenses to radio broadcasting stations throughout the United States gratis? A. There are some that receive gratuitous licenses from the American Society of Composers, Authors and Publishers.

Q. Are you able to state the particular radio broadcasting stations which receive such licenses from the American Society of Composers, Authors and Publishers?

Mr. Bennett: I object unless the witness is able to demonstrate that the broadcasting stations are engaged in broadcasting publicly for profit and are not merely eleemosynary or other non-profit organizations, not covered by the public performance provisions of the copyright Act.

(The question was read.)

[fol. 689] Mr. Frohlich: Will you answer that, please.

All cannot recall them from memory; I know that there are quite a few stations that have received gratuitous licenses in the United States.

Q. Could you refresh your recollection from any docu-

ment?

A. Yes, sir.

Q. I hand you this document and ask you whether you are able to refresh your recollection from it.

A. Yes, sir; definitely.

Q. Now will you please tell us—Have you refreshed your recollection?

A. Yes, sir.

Q. Now, can you state the various radio broadcasting stations that receive such licenses?

Mr. Boggs: The objection is renewed.

Q. You may answer.

A. Station KFGO, operating in Boone, Iowa.

Q. This list of stations which I have shown you, from which you refreshed your recollection, is that an accurate, true list of the stations that receive a free license from ASCAP?

A. Yes.

Q. Was that prepared from your own office files?

[fol. 690] Mr. Frohlich: I offer it in evidence.

Mr. Boggs: Subject to the same objection as heretofore made by the defendants.

(List of stations received in evidence and marked Complainants' Exhibit 16 of this date.)

Q. Are these stations in Plaintiffs's Exhibit 16 commercial or non-commercial stations?

A. Non-commercial stations.

Mr. Bennett: I move to strike the exhibit on the ground that the witness has testified that the stations itemized on Exhibit 16 are non-commercial stations; therefore they are not subject to the public performance for profit provisions of the Copyright Act of 1909.

Q. I show you a group of contracts between the American Society of Composers, Authors and Publishers and certain radio broadcasting stations located in the State of Florida, and ask you whether you will be good enough to look at each one of them and see if you recognize the signatures on them. Take this one, Wonderful Isle Of Dreams broadcasting station, what is the station?

A. Operating station WIOD, Miami Beach, Florida. The original contract was issued as of September 1, 1932, and was extended as of its termination date for an additional

[fol. 691] period ending December 31, 1940.

Mr. Frohlich: It is conceded by counsel that this group of 16 contracts is all executed by the respective parties named therein and that said contracts have been in force since the dates contained therein and are presently in force in the State of Florida.

Mr. Boggs: The concession is made subject to the claim of the defendants in this case that said contracts are invalid under Section 1 of the Florida State statute of 1937, in-

volved in this litigation.

Mr. Frohlich: It is also stipulated that photostats of each one of these 16 contracts may be received in evidence in place and instead of the originals, with the same force and effect.

Mr. Boggs: That concession is made.

(16 photostatic copies of contracts received in evidence and marked Complainants' Exhibits 17-A to 17-P inclusive, of this date.)

By Mr. Frohlich:

Q. Now, Mr. Greenberg, are all of these contracts which have been received in evidence as Plaintiffs' Exhibits 17-A to 17-P, in full force and effect at the present time?

A. No, sir.

Q. Which are not?

[fol. 692] A. WMFJ and WTAL.

Q. That is to say, Plaintiffs' Exhibit 17-G and Plaintiffs' Exhibit 17-F?

A. Yes, sir.

Q. Now, what has happened to those contracts?

A. Those contracts were cancelled, due to the failure of

the licensee to comply with the terms of the license.

Q. And are the other contracts in this group, Plaintiffs' Exhibits 17-A to 17-P, in full force and effect at the present time?

A. Yes, sir.

Q. And are being performed by both sides?

A. Yes, sir.

Q. Have you made a tabulation of those contracts, Plaintiffs' Exhibit 17-A to 17-P, which were in force and effect on June 9, 1937?

A. Yes, sir.

Q. Will you please look at this tabulation and state whether it is correct.

A. Yes, sir; this is the tabulation.

Mr. Frohlich: I offer it in evidence.

Mr. Boggs: No objection.

(Tabulation of contracts received in evidence and marked Complainants' Exhibit 18 of this date.)

[fol. 693] Q. Have you made a tabulation of those contracts which were in force and effect on June 12, 1939?

A. I did.

Q. I show you that tabulation and ask you whether that is true and correct?

A. That is true and correct, as radio contracts in effect June 12, 1939.

Mr. Frohlich: I offer it in evidence.

Mr. Boggs: No objection.

(Tabulation received in evidence and marked Complainants' Exhibit 19, of this date.)

Q. Mr. Creenberg, have you made a tabulation of the contracts which were in force and effect on June 9, 1937, between the American Society of Composers, Authors and Publishers and the owners and operators of motion picture theatres in the State of Florida?

A. I did.

Q. I show you this tabulation and ask you whether it is correct?

A. It, is, sir.

Mr. Frohlich: I offer it in evidence.

Mr. Boggs: No objection.

(Tabulation of contracts received in evidence and marked Complainants' Exhibit 20, of this date.)

Q. Mr. Greenberg, have you made a tabulation of the [fol. 694] contracts between the American Society of Composers, Authors and Publishers and the owners and operators of motion picture theatres in the State of Florida which were in force and effect on June 12, 1939?

A. I did.

Q. I show you this list and ask you whether that is a true and correct compilation of those contracts.

A. It is.

Mr. Frohlich: I offer it in evidence.

Mr. Boggs: No objection.

(Tabulation received in evidence and marked Complainants' Exhibit 21 of this date.)

Q. I show you agreement between the American Society of Composers, Authors and Publishers and one R. L. Bailey, operating the Eagle Theatre at Blountstown, Florida, dated April 10, 1934, and ask you whether you recognize the signatures on the contract.

A. I recognize the signature of Mr. Henry L. Bouten.

Q. And was he a representative of the American Society of Composers, Authors and Publishers down in Florida?

A. Yes.

Mr. Frohlich: I offer it in evidence, and it is stipulated that a photostatic copy of that contract may be received in evidence instead of the original; it is also stipulated that [fol. 695] this contract with Bailey is typical of the other contracts between the American Society of Composers, Authors and Publishers and the owners or operators of motion picture theatres which are mentioned and described in Plaintiffs' Exhibits 20 and 21.

Mr. Boggs: No objection.

(Contract received in evidence and marked Plaintiffs' Exhibit 22 of this date.)

Q. Mr. Greenberg, did you make a compilation of the contracts between the American Society of Composers, Authors and Publishers which were in force and effect on June 9, 1937, with the owners and operators of hotels in the State of Florida?

A. I did.

Q. I show you this compilation and ask you whether that is true and correct.

A. Yes.

Mr. Frohlich: I offer it in evidence.

Mr. Boggs: No objection.

(Compilation received in evidence and marked Complainants' Exhibit 23 of this date.)

Q. Did you make a compilation of the contracts between the American Society of Composers, Authors and Publishers and the owners and operators of hotels in the State of [fol. 696] Florida, which were in full force and effect on June 12, 1939?

A. I did.

Q. I show you this compilation and ask you whether it is true and correct.

A. It is.

Mr. Frohlich: I offer it in evidence.

Mr. Boggs: No objection.

(Compilation received in evidence and marked Plaintiffs' Exhibit 24 for this date.)

Q. I show you this document, Mr. Greenberg, purporting to be a contract between the American Society of Composers, Authors and Publishers and William Urney, manager of the Urney Hotel in Miami, Florida, dated January 23, 1935, and ask you whether you recognize the signatures?

A. I recognize the signature of William E. Arnaud.

Q. Who was he?

A. Our representative for the State of Florida.

Q. And this contract was taken from your files?

A. Yes, sir.

Mr. Frohlich: I offer it in evidence; and it is stipulated that a photostat of this contract may be received in place of the original; it is further stipulated that this contract [fol. 697] is typical in form of the other contracts between the Society and the owners and operators of hotels in the

State of Florida, which are contained in the compilations in evidence, Plaintiffs' Exhibits 23 and 24.

Mr. Boggs: No objection.

(Photostatic copy of contract received in evidence and marked Complainants' Exhibit 25 of this date.)

Q. Mr. Greenberg, did you make a compilation of the contracts which were in force and effect between the American Society of Composers, Authors and Publishers and the owners and operators of restaurants in the State of Florida on June 9, 1937?

A. I did.

Q. I show you this document and ask you whether that is such compilation.

A. It is.

Mr. Frohlich: I offer it in evidence.

Mr. Boggs: No objection.

(Compilation received in evidence and marked Complainants' Exhibit 26 of this date.)

Q. Did you make a compilation of the contracts between the American Society of Composers, Authors and Publishers and owners of restaurants on June 12, 1939? [fol. 698] A. Yes, sir.

Q. I show you this compilation and ask you whether that

is true and correct.

A. It is.

Mr. Frohlich: I offer it in evidence.

Mr. Boggs: No objection.

(Compilation received in evidence and marked Complainants' Exhibit 27 of this date.)

Q. I show you this contract, Mr. Greenberg, between the American Society of Composers, Authors and Publishers and Jack Broome, operator of the Reef Grill at Miami, Florida, dated January 30, 1936, and ask you whether you recognize the signatures.

A. Yes, sir; I recognize the signature.

Q. How do you spell that? A. Mr. Henry L. Bouten.

Q. Is this contract taken from your files?

A. Yes, sir.

Topa"

Q. Who was Bouten?

A. He was associated with our office, supervising in the State of Florida.

Mr. Frohlich: It is stipulated that a photostat of the same may be received in place of the original. It is also [fol. 699] stipulated that this contract is typical in form with the other contracts made between the American Society of Composers, Authors and Publishers and operators of restaurants in the State of Florida as taken from compilations in evidence as Complainants' Exhibits 26 and 27.

Mr. Boggs: No objection.

(Photostatic copy of contract received in evidence and marked Complainants' Exhibit 28, of this date.)

Q. Mr. Greenberg, did you make a compilation of the contracts between the American Society of Composers, Authors and Publishers and the owners and operators of dance halls in the State of Florida?

A. Yes. sir.

Q. In force and effect June 9, 1937?

A. Yes, sir.

Q. I show you this compilation and ask you whether that is true and accurate.

A. It is.

Mr. Frohlich: I offer it in evidence.

Mr. Boggs: No objection.

(Compilation received in evidence and marked Complainants' Exhibit 29 of this date.)

Q. Did you make a compilation of the contracts in force [fol. 700] and effect on June 12, 1939, between the American Society of Composers, Authors and Publishers and the owners and operators of dance halls in the State of Florida?

A. Yes, sir.

Q. I show you this compilation and ask you whether that is true and correct.

A. It is.

Mr. Frohlich: I offer it in evidence.

Mr. Boggs: No objection.

(Compilation received in evidence and marked Complainants' Exhibit 30 of this date.)

Q. I show you this contract between the American Society of Composers, Authors and Publishers and one H. W.

Diaz, operating the Sulphur Springs Altus Ballroom at Tampa, Florida, dated May 6, 1939, and ask you whether you recognize the signatures on that contract.

A. Yes, sir. I recognize the signature of I. T. Cohen.

Q. And who is Mr. Cohen?

A. Mr. Cohen is the present representative of the Society representing the State of Florida.

Q. And is this contract taken from your files?

A. Yes, sir.

Mr. Frohlich: I offer it in evidence. It is stipulated that a photostat of the same may be received in place and stead [fol. 701] of the original, and it is also stipulated that this contract is typical in form of the contracts between the American Society of Composers, Authors and Publishers and the owners and operators of dance halls in the State of Florida, which are compiled on the lists in evidence as Plaintiffs' Exhibits 29 and 30.

Mr. Boggs: No objection.

(Photostatic copy of contract received in evidence and marked Complainants' Exhibit 31 of this date.)

Q. Where does I. T. Cohen reside?

A. In the South; Atlanta, State of Georgia.

Q. And where is his office located?

A. In the City of Atlanta, State of Georgia.

Q. Where does Bouten reside?

A. City of Atlanta, State of Georgia.

Q. Where is his office?

A. City of Atlanta, State of Georgia.

Q. Where does Arnaud reside?

A. The same place, City of Atlanta, Georgia.

Q. Where is his office?

A. In the City of Atlanta, Georgia.

Q. Did you make a compilation of the contracts which [fol. 702] were in force and effect on June 9, 1937, between the American Society of Composers, Authors and Publishers and various miscellaneous places of amusement and entertainment in the State of Florida?

A. I did.

Q. I show you this compilation and ask you whether that is true and accurate.

A. It is, sir.

Mr. Frohlich: I offer it in evidence. Mr. Boggs: No objection.

(Compilation received in evidence and marked Plaintiffs' Exhibit 32 of this date.)

Q. Mr. Greenberg, did you make a compilation of the contracts which were in force and effect between the American Society of Composers, Authors and Publishers and various miscellaneous establishments of amusement and entertainment in the State of Florida on the 12th of June, 1939?

A. I did.

Q. I show you this document and ask you whether that is true and correct.

A. It is.

Mr. Frohlich: I offer it in evidence.

Mr. Boggs: No objection.

(Compilation received in evidence and marked Complain-[fol. 703] ants' Exhibit 33 of this date.)

Q. I show you this contract, Mr. Greenberg, between the American Society of Composers, Authors and Publishers and Barnum & Bailey Combined Shows, Sarasota, operating Ringling Brothers Circus at Sarasota, Florida, dated June 13, 1934, and ask you whether you recognize the signatures at the foot.

A. I do, the signature signed on behalf of the Society is my own, and that for Ringling Brothers is John Kelly.

Q. Was this taken from your files?

A. Yes, it was signed in my office. Q. In your presence?

A. Yes, sir.

Mr. Frohlich: It is stipulated that a photostat of the same may be received in place and stead of the original, and it is also stipulated that this contract is typical in form with the other contracts for miscellaneous establishments establishments which are enumerated in the compilations in evidence as Plaintiffs' Exhibits 32 and 33.

Mr. Boggs: No objection.

(Photostatic copy of contract received in evidence and marked Complainants' Exhibit 34 of this date.)

[fol. 704] Q. Mr. Greenberg, are you generally in charge of the active supervision of the American Society of Com-

posers, Authors and Publishers with respect to infringements?

A. Yes, sir.

Q. And can you tell us the practice with regard to in-

fringements on the copyrights of its members?

A. The contracts with regard to what procedure is followed before an infringement action is instituted by this Society and its representatives throughout the country is, generally where infringements have been taken on the works of the members, before infringements are taken, there is usually a routine that is followed by the Society, in that when they ascertain an establishment is performing music and is using copyrighted musical works of our members, they forward to such establishment or its proprietor a notice calling to their attention the necessity of our protecting the rights of the copyrighted music of our members.

Q. I show you this document and ask you if you recog-

nize it?

A. Yes, sir.

Q. What is it?

A. Our usual first notice to unlicensed establishments.

Q. And that is sent after you obtain evidence of the—
[fol. 705] A. No, that is sent when we ascertain that music is being performed in the establishment, calling to their attention the necessity to secure our license; this communication has an application to submit if an operating license is desired.

Mr. Frohlich: I offer it in evidence.

Mr. Boggs: No objection.

(Notice received in evidence and marked Complainants' Exhibit 35 of this date.)

Q. Now, what do you do after that first notice is sent?

A. If no application or response is received to that first notice, a second notice is sent within a period of a week or ten days.

Q. I show you this document and ask you whether you recognize it?

A. Yes, sir; this is what we call our second notice to unlicensed establishments.

Mr. Frohlich: I offer it in evidence.

Mr. Boggs: No objection.

(Second notice received in evidence and marked Complainants' Exhibit 36, of this date.)

Q. What happens after you send your second notice?

A. If no response is received to either the first or second [fol. 706] notice, a third notice is sent by United States registered mail.

Q. I show you this document and ask you whether you

recognize it.

A. Yes, sir; this is our third notice.

Mr. Frohlich: I offer it in evidence.

Mr. Boggs: No objection.

(Third notice received in evidence and marked Complainants' Exhibit 37 of this date.)

Q. What happens after a third notice is sent?

A. If there is no response to either first, second or third notices, a representative of our office will visit the establishment and definitely ascertain as to whether or not the copyrighted music works of our members are being performed.

Q. If he obtains evidence that works of members are

being performed, then what do you do?

A. The proprietor of the establishment is so informed and given an opportunity to secure a license if he so desires at such time. On his failure to secure the license, arrangements are made to proceed to redress the infringement as provided by the Copyright Law.

Q. In other words, do you bring suit?

A. Yes, sir.

[fol. 707] Q. Now, after these shits are brought, Mr. Greenberg, does the Society in many cases obtain judgments in its favor?

A. Yes, sir.

Q. From your own knowledge and experience, how much has the Society obtained in the way of judgment against a man for one infringement?

Mr. Boggs: The question is objected to as incompetent and immaterial.

(Pending question read.)

Mr. Frohlich: You may answer.

A. Actual collection is two dollars.

Q. For damages !

25-610-611

A. Oh, an insignificant amount.

Q. What does it usually obtain by way of judgment for one infringement?

Mr. Boggs: The same objection.

A. \$250.00.

Q. Now, does the Society attempt to collect that \$250.00 as damages?

A. No. sir.

Q. And if the defendant thereafter comes in and asks for a license, what is the practice of the Society in that respect [fol. 708] Mr. Boggs: I object on the ground that it is immaterial and irrelevant.

A. To issue the license and waive the damages secured

through the litigation.

Q. Have you at my request made a compilation of the number of licenses that have been in force each year throughout all the states of the Union, from 1922 to 1939, inclusive?

A. Yes, sir, I have made such a compilation.

Q. And where did you obtain the information from which you made this compilation?

A. From our records.

Q. The records of the Society?

A. Yes, sir.

Q. Kept in the usual course of ordinary business?

A. Yes, sir.

Q. Are they kept under your own supervision?

A. Yes, sir.

Q. And you know generally what is in those records?

A. Yes, sir.

Q. And is this compilation that you have made a truthful and accurate resume made from those records and kept by you?

A. Yes, sir.

[fol. 709] Mr. Frohlich: I offer it in evidence.

Mr. Boggs: I object to it on the ground it is irrelevant and immaterial.

(Compilation of licenses received in evidence and marked Complainants' Exhibit 38 of this date.)

Q. Mr. Greenberg, are you in charge of the books of account of your office?

A. Yes, sir.

Q. And are they kept under your own personal supervision?

A. That's right.

Q. Have you at my request made a compilation of the revenue that the American Society of Composers, Authors and Publishers has received annually from the State of Florida from its various licensees, for the years 1935, 1936, 1937, 1938 and 1939?

A. I have.

Q. And have you also made a compilation of the expenses that were incurred by the Society in the State of Florida in collecting that revenue?

A. Yes, sir.

- Q. Have you also made a compilation of the net amount that was received by the Society from the State of Florida for those years?
- [fol. 710] A. Yes, sir.

 Q. Has that compilation been made from your books of account?

A. Yes, sir.

Q. Is it true and accurate?

A. Yes, sir.

Q. Now, I show you on this compilation the column entitled "Expenses."

A. Yes, sir.

Q. Will you please look at this column commencing with the item \$12,371.16, 1935, and tell us how you arrive at and what you mean by expense, what does that include?

A. It is a very simple matter. The fact of the matter is that under the year 1935 the representative supervising that territory received a commission against gross collections of the operating cost.

.Q. What commission did he receive?

A. I think it was 25 per cent at that date.

Q. Of the gross? Does that item of expense include other items in addition to his commission?

A. I doubt it in that year.

Q. That would be simply the expense, the commission paid to Mr. Arnaud. Was he then your representative?

A. He was then our representative in that territory.

[fol. 711] Q. In conjunction with the document you have now identified, I show you another document and ask you what this document represents.

A. There is an item of legal expense involved, on general overhead expense for the operation of that office.

Q. Well, now, for 1935 what is the general expense?

A. The general expense amounts to \$5,217.59.

Q. Does that merely mean commissions paid to Mr. Arnaud?

A. No, sir; the commission amounts to \$6,835.47.

Q. Just what is the general expense paid that is not commission?

A. The general expense of the operation of the Florida territory as against the general expense of the home office.

Q. In other words, you have here the general expense of the Society throughout the country for that year?

A. And I have allocated the share—

Q. That Florida bears to that general expense, to that figure, is \$5,217.59?

A. That is correct.

Q. And this commission that you actually paid to Arnaud for the year is \$6,835.47?

A. That's correct.

[fol. 712] Q. Then did you have some legal expense that year in that State?

A. \$318 and some odd cents.

Q. A total of \$12,371.167

A. Yes.

Q. That \$12,371.16 represents complete expenses from the entire operation of the Society with respect to the amounts collected in the State of Florida?

A. That is correct.

Q. Now, I direct your attention to 1936, in this document you have here. Does that represent some breakdown of the expenses?

A. That is so.

Q. The general expenses that you have here is \$6,728.58.

A. That is right.

Q. Is that again an allocation of all of the expenses of the Society with respect to the State of Florida for that year?

A. That is right.

Q. In addition to that allocation, have you also actual commissions paid to your representative in that State?

A. Yes.

[fol. 713] Q. And that amounts to \$7,672.33?

A. That is correct.

Q. In addition to that, did you have some legal expenses that year?

A. The legal expenses amounted to \$550.57.

Q. In the State of Florida?

A. Yes, sir.

Q. So that the total expenses for the State of Florida for that year were how much?

A. \$14,550.78.

Q. Now, I direct your attention to 1937. You have here an item of \$8,491.39. Does that represent an allocation to the State of Florida of the general expenses of the Society for all its operations throughout the country that year?

A. That is correct.

Q. In addition to that allocation, I direct your attention to the column entitled Commissions, \$5,958.59, does that represent commissions actually paid to your representative in that State?

A. That is correct.

Q. In addition to that you have some legal expenses in that State, \$273.927

A. That is correct.

[fol. 714] Q. What is the grand total for the year?

A. \$14,724.26.

Q. I direct your attention to general expenses of \$14,-612.34. Does that represent again the allocation to the State of Florida of the entire expenses of the Society in its operation for the year?

A. In addition to the expenses allocated to the State of

Florida.

Q. No. I mean does it represent an allocation to the State of Florida for the general expenses of the Society's operations that year throughout the country?

A. Yes, sir.

Q. Now, in addition to that allocation, I direct your attention to the column "Commissions, \$8,874.71." Does that represent commissions actually paid by the Society to its representative for the collection of revenue from the State of Florida that year?

A. That is correct.

Q. In addition to that, I direct your attention to the column Legal Expenses, \$91.40. Does that represent moneys paid by you for legal expenses in that State?

A. That is right.

Q. What is the grand total?

A. \$23,481.45.

[fol. 715] Q. Now, take the year 1935. I direct your attention to the column General Expenses, \$15,702.40. Does that again represent an allocation to the State of Florida of all of the general expenses for its operations in the United States for that year?

A. That is right.

Q. I direct your attention to the column entitled Commissions \$5,763.29. Does that represent the actual commissions paid by the Society for the revenue received from that State that year?

A. Yes, sir.

Q. Did you have any legal expenses that year?

A. No, sir.

Q. I direct your attention to the grand total, what is that?

A. \$21,465.69.

Q. That represents all of the expenses incurred for the collection of revenue from the State of Florida that year!

A. Yes, sir.

Mr. Frohlich: I now offer in evidence these two documents with the compilations.

Mr. Boggs: May I inquire of the witness-I think it will

save a little time.

[fol. 716] Mr. Frohlich: Go right ahead. I want you to.

By Mr. Boggs:

Q. Mr. Greenberg, as I understand your testimony, the item which you have termed General Expenses is computed by taking the entire expenses of operation of the Society all over the United States and pro rating it in proportion to the revenue received: is that the method of computing that General Expense?

A. Yes, approximately.

Q. You say approximately; just what do you mean by that?

A. I mean that is the way it was computed, just as I have stated it.

Q. There is then no charge under the head of General Expenses for any particular burden which your office might have considered the operations in the State of Florida as entailed upon your general office?

A. No, sir.

Mr. Finkelstein: If you could be more specific—I don't know what you have in mind.

By Mr. Boggs:

Q. In other words, to make my question more clear: Let's suppose in a given year, for some reason, the direction of your business in the State of Florida had proved consider-[fol. 717] ably more troublesome than in some other States. Under this compilation would you make an allowance for that in computing the amount of the expenses that you allocated to the State of Florida?

Mr. Finkelstein: I object to the question on the ground that it is hypothetical.

By Mr. Boggs:

Q. Do you understand the question?

A. I think I do, but I told you that the general expense was computed and that answers that questions as well as this question here.

Q. In other words, it is computed on no factor except the ratio which the gross receipts bear, the gross receipts of the Society's entire operations—?

A. As against its operating cost.

Mr. Boggs: I will now withdraw the objection as to the competency of the exhibit, and substitute only the following objection: One is that it is immaterial and irrelevant, and the second is that the mode of computing the expense is not accurate.

Mr. Frohlich: I offer it in evidence.

(Compilation of revenue and expenses received in evidence and marked Complainants' Exhibit 39 of this date.)

[fol. 718] By Mr. Frohlich:

Q. Mr. Greenberg, did you at my request examine a magazine entitled "Radio To-day"?

A. Yes.

Q. What issues, the issue of January 1, 1936; the issue of January 1, 1937; the issue of January 1, 1938; the issue of January 1, 1940?

A. Yes, sir.

Q. Now, what is this magazine "Radio To-day"?

A. It is a radio publication giving statistical information with regard to the radio industry.

Q. Is it generally regarded in the industry to be a true statistical report of the figures in the industry?

A. Yes, sir; it is so accepted.

Q. And is it widely circulated in the industry?

A. Yes, sir.

Q. Now, did you from that magazine make a compilation of the time sales for the respective years, January 1st, 1936, down to January 1, 1940, and the population and the number of radio sets sold, and the number of tubes sold in those years?

A. I did.

Q. Is this list that I hand you a true and accurate compilation made from those magazines?

[fol. 719] A. It is, sir.

Mr. Frohlich: I will offer this document in evidence. It is stipulated that in the column entitled "Time Sales" the figures therein appearing are gross figures and do not take into consideration the discounts that were granted by the radio industry on those time sales. It is further stipulated that the defendants may upon the trial offer in evidence the figures showing the discounts on those time sales in the form of a separate compilation.

Mr. Boggs: Subject to the defendants' objection that it

is irrelevant and immaterial.

Mr. Frohlich: They are not objected to on the ground of incompetency?

Mr. Boggs: No, sir.

Mr. Frohlich: It is also stipulated that the figures contained in this compilation are approximate figures, in round numbers.

(Radio compilation received in evidence and marked Complainants' Exhibit 40 of this date.)

Mr. Boggs: Let us clear it up, just that simple thing. When it says January 1, 1936, it means for the previous year.

Mr. Frohlich: It is further stipulated that on this exhibit, [fol. 720] Plaintiffs' Exhibit 40, where the dates are January 1, 1936, the figures following that date are for the previous year, and that the same is true of each succeeding January 1st date on that compilation.

By Mr. Frohlich:

Q. Mr. Greenberg, did you at my request examine the magazine "Radio Today," January issues of 1935 to 1937!

A. Yes, sir.

Q. And did you also examine the magazine entitled "Broadcasting Year Book," 1935 to 1937?

A. Yes, sir.

Q. What is that Broadcasting Year Book?

A. The Broadcasting Year Book is a publication distributed by the Broadcasting Magazine giving statistical and other information relative to the radio industry.

Q. Is that magazine generally circulated in the trade?

A. Yes, sir.

Q. And is it generally accepted as an accurate and truthful representation of the statistical information of that trade?

A. It is.

Q. Have you prepared a compilation from those magazines for the years mentioned, showing the homes in the [fol. 721] State of Florida in which radios are used?

A. I have.

Q. And is that compilation true and accurate?

A. It is.

Q. And does that compilation also refer to the issues of the magazine from which it is taken?

A. Yes, sir.

Mr. Frohlich: I offer it in evidence.

Mr. Boggs: I object on the ground that it is immaterial and irrelevant.

Mr. Frohlich: It is not objected to on the ground of

incompetency?

Mr. Boggs: There is no objection to its competency; but the defendants are privileged to put in other figures than here shown if they desire to do so.

Mr. Frohlich: That is right.

(Radios in Florida, compilation received in evidence and marked Complainants' Exhibit 41 of this date.)

Q. Did you, Mr. Greenberg, examine the Broadcasting Year Book for 1938?

A. I have.

Q. Did you from that year book make a compilation of [fol. 722] the statistics contained in that Year Book on retail radio sales in the United States from 1922 to 1937?

A. I did.

Q. And did you make that in the form of a compilation on a sheet of paper?

A. I did.

Q. I show you this compilation and ask you whether that is true and accurate as taken from that magazine?

A. Yes, sir; it is true, accurate, and taken from the pub-

lication mentioned.

Mr. Frohlich: The same is offered in evidence, subject to any further statistics or documents that the defendants may produce at the time of the trial.

Mr. Boggs: Subject to the objection of it being imma-

terial and irrelevant.

Mr. Frohlich: There is no objection to its competency? Mr. Boggs: No.

(Compilation of radio sales received in evidence and marked Complainants' Exhibit 42 of this date.)

Mr. Frohlich: I offer in evidence a document entitled "Federal Communications Commission, Washington, D. C.," dated June 28, 1939, numbered 34845, containing certain [fol. 723] tabulations with respect to the 660 broadcasting stations in the United States and certain statistics with reference to such stations.

Mr. Boggs: That is objected to on the ground of it being immaterial and irrelevant; no objection as to competency.

Mr. Frohlich: There is no objection to competency.

(Tabulation, 660 stations, received in evidence and marked Complainants' Exhibit 43, of this date.)

Mr. Frohlich: I offer in evidence a document entitled "Federal Communications Commission, Washington, D. C.," dated January 6, 1939, numbered 34977, containing certain statistics with regard to income statements of the Columbia Broadcasting System, Inc., the National Broadcasting Company, and the Mutual Broadcasting Company, Inc.

Mr. Boggs: The defendants object solely on the same ground as that interposed to Exhibit 43.

(Income statements received in evidence and marked Complainants' Exhibit 44, of this date.)

Mr. Frohlich: I offer in evidence the list of the broadcasting stations in the State of Florida, showing the frequency in kilocycles, dated January 15, 1940.

[fol. 724] Mr. Boggs: It is objected to on the ground of it being immaterial and irrelevant.

Mr. Frohlich: It is not objected to on the ground of its competency?

Mr. Boggs: It is not objected to on the ground of being

incompetent.

(It was stipulated that the list of broadcasting stations in the State of Florida be copied into the record, as follows:)

City	Frequency in Kilocycles	Day Power Watta	Night Power Watts
Daytona Beach	Knocycaca		
WMFJ	1420	250	250
Ft. Lauderdale WFTL	1370	250	100
Ft. Mycrs WFTM	1210	250	250
Gainesville WRUF	830	5000	L-5000
Jacksonville			
WJAX	900	5000	1000
WJHP	1290	250	250
WMBR	1370	250	250
Lakeland WLAK	1310	250	250
Miami /			
WIOD	610	1000	1000
WQAM	560	1000	1000
Miami Beach WKAT	1500	250	250
[fol. 725]			
Ocala WTMC	1500	100	100
Orlando WDBO	580	5000	1000
Pansma City WDLP	1200	250	100
Pensacola			
WCOA	1340	1000	500
St. Augustine WFOY	1210	250	250
St. Petersburg	4		
WSUN	620	5000	1000
WTSP	1370	250	250
Sarasota WSPB	1420	250	100
Tallahaeree WTAL	1310	250	100
Tampa	ST ENDER	31	
WDAE	1220	5000	*5000
WFLA	620	5000	2000
West Palm Beach			
WJNO	1200	250	250

Mr. Frohlich: I would like to offer photostats from Radio Magazine, "Radio Today" of January 1939, showing two

pages of statistics on radio, entitled "Uncle Sam's bill for radio, radio sets in use, the growth of radio from 1922 to 1939, actual sales, homes with radios, radio sets and tube sales for the year 1938, homes with radios by States, roll-call of radio industry, January 1, 1939, sales of replace-[fol. 726] ment cost, 1938, sound sales, 1938."

Mr. Boggs: There is no objection to competency; it is

object-- to as immaterial and irrelevant.

(Statistics on Radio received in evidence and marked Complainants' Exhibit 45 of this date.)

Mr. Frohlich: I offer in evidence the photostat of page 11 of the issue of "Radio Today" for January 1940, entitled "Statistics of the Industry, United States Annual Radio Bill, Radio sets in use, radio receivers sales and volume in 1939."

Mr. Boggs: Same objection.

(Received in evidence and marked Complainants' Exhibit 46 of thi-date.)

By Mr. Frohlich:

Q. Mr. Greenberg, did you at my request examine the magazine entitled "Radio Advertising Rates and Data" for January 1, 1940, particularly pages 59 to 63?

A. I did.

Q. What is that magazine?

A. That is a magazine used by the radio industry, containing detailed information with regard to the broadcasting stations operating in the United States, furnishing their rate accordingly, and offering information pertaining to [fol. 727] their operation.

Q. And did you from that magazine compile a list of the broadcasting stations in the State of Florida who are members of the National Association of Broadcasters?

A. I did.

Q. Will you please look at this list and see if it is an accurate compilation of those stations.

A. Yes, sir.

Mr. Frohlich: I offer this document in evidence subject to correction, with respect to the membership of any of the stations listed thereon with the National Association of Broadcasters. Mr. Bennett: That is objected to on the ground that it is immaterial and irrelevant.

Mr. Frohlich: No objection as to competency?

Mr. Bennett: No.

(Received in evidence and marked Complainants' Exhibit 47 of this date.)

(A recess was taken until 2:30 o'clock p. m.)

[fol. 728] After recess.

Invine Berlin, called as a witness in behalf of the Complainants, having been first duly sworn, did depose and say:

Direct examination.

By Mr. Frohlich:

- Q. Where do you live, Mr. Berlin?
- A. New York.
- Q. And what street?
- A. 17 East 78th Street.
- Q. What is your occupation?
- A. Author and composer.
- Q. And are you connected with any corporation or firm?
- A. I am.
- Q. What is the name of the firm?
- A. Irving Berlin, Inc.
- Q. How many years have you been connected with that firm.
 - A. Ithink since 1919; yes, I think that is the year.
- Q. Are you a stockholder and also a Director in that company?
 - A. Yes, sir.
- Q. And that is the same company that Mr. Saul Bornstein [fol. 729] is connected with?
 - A. That is right.
 - Q. Now, when did you first commence to write music?
 - A. In 1907.
 - Q. Have you been writing music ever since?
 - A. Yes, sir.
 - Q. And that is your complete occupation today?
 - A. That is right.

Q. And has been over the years?

A. That is right.

Q. Now, you also write the lyrics of musical composi-

A. That is right.

Q. Do you as a rule write the words and compose the music for the compositions that you produce?

A. Completely.

Q. And prior to 1923 did you write a considerable number of musical compositions?

A. That is right.

Q. And were some of those compositions successful?

A. They were.

Q. And were some of those compositions known as hits!

A. That is right.

Q. Can you name some of the hits that you wrote prior [fol. 730] to 1923?

A. Yes, sir.

Q. Will you please name them.

A. "Alexander's Ragtime Band." "Everybody's Doing It." "A Pretty Girl is Like a Melody." "Oh, How I Hate to Get Up in the Morning." "Say it with Music." "When I Lost You." "My Wife's Gone to the Country." "International Rag." "Crinoline Days." "This is the Life." "When the Midnight Choo-Choo Leaves for Alabam"." Have you had enough?

Q. Yes. Now, did you publish those compositions with

your firm?

A. Those that I have mentioned, not all, some were written for a firm called Watterson, Berlin & Snyder. This is before I went into the business for myself.

Q. And have some of the songs that you have just men-

tioned sold large quantities of sheet music?

A. They did.

Q. Did some of the songs sell as high as a million copies!

A. Yes, and some sold more.

Q. Now, did you receive moneys from the mechanical reproduction of those songs prior to 1923?

A. Yes, sir.

Q. And were those sums substantial?

[fol. 731] A. Very substantial.

Q. What would you say was the percentage of the sale of sheet music that you received as compared with mechanical royalties?

A. I am sorry.

Q. Perhaps I had better put the question in another way. About what did you receive on any particular hit number for mechanicals in proportion to what you received from the sale of sheet music?

A. Well, many of the mechanical statements amounted to

more than they did for the sheet music.

Q. You actually received more money from that source than you did for sheet music?

A. That is true, in some cases.

Q. Now, can you mention some of the hit songs that you wrote subsequent to 1923?

.A. Yes.

Q. Will you please name them?

A. "Cheek to Cheek"; "Top Hat, White Tie and Tails"; "Easter Parade"; "Heat Wave"; "I Poured My Heart Into A Song"; "It's a Lovely Day to be Caught in the Rain"; "God Bless America"; "I Am Putting All My Eggs In One Basket".

Q. Now, those songs you have just mentioned, Mr. Ber-

lin, were also hit numbers?

[fol. 732] A. They are what we call hits; they were very popular.

Q. They were very popular?

A. Very.

Q. And performed over the air and other places of entertainment?

A. Yes, sir.

Q. Now, did any of those songs sell as high as a million copies?

A. No.

Q. Did you receive from the mechanical royalties from those songs as much as from the sale of sheet music?

A. No.

Q. Was there a great diminution in the amount you received from mechanical royalties and sheet music on those last mentioned songs with respect to the first mentioned songs?

A. Oh, I should think there would be—I think they would be about 10 per cent today as against—Are you speaking now of mechanical royalties?

Q. Mechanical royalties over sheet music.

A. Well, to give you actual figures, the socalled hit songs that sold a million copies would sell 200,000 copies today,

if that; in other words, a 200,000 song today is considered a big hit. If you are selling 200,000 or 250,000 today it is very exceptional, as an exceptional song may have been [fol. 733] in other days. Mechanical rights, I know I have checked up, and I would say they range from 8 to 10 per cent of what they used to be.

Q. Now, to what do you attribute that difference in the

revenue, Mr. Berlin?

A. Well, I think it is the over-exploitation, if that is the right word, or the overplay of music. People do not get a chance to become acquainted with a song before it is over.

Q. Where is that music overplayed?

A. I would say almost entirely on the radio.

Q. Now, in addition to writing musical compositions, have you also written and composed musical plays?

A. That is right.

Q. Known as dramatico-musical works?

A. Yes, sir.

Q. Can you name some of the more important plays that

you have written over the years?

A. Well, for the theatre, for the Music Box Revenue, recently—or, not recently, a few years—"As Thousands Cheer"; "Face the Music"; "Coconuts" for the Marx Brothers. And for the Ziegfeld Follies, that is, not in their entirety, "Watch Your Step"; "Stop, Look and Listen"; and several others that I can't think of just now.

[fol. 734] Q. Have you also written songs for motion picture productions in the past few years?

A. I have.

Q. Can you name some of those pictures?

A. Yes. "Top Hat" for Astaire and Rogers. "Carefree" for the Twentieth Century Fox. I wrote for the picture called "On the Avenue," and for the picture called "Alexander's Ragtime Band," which included mostly old songs; and recently for a picture for Sonja Heine, called "Second Fiddle."

Q. With respect to the compositions that were contained in your musical plays, were any of those compositions restricted with respect to public performance for profit?

A. Yes, they were all restricted.

Q. Can you tell us why they were restricted?

A. Well, the producers of the shows and the producers of the pictures pay royalties on these, and if we could not

restrict them, and if they were played just promiscuously with the—I think eventually it would interfere with the gross receipts of the picture or the musical comedy. I mean we could not afford to take something that the producers were paying for and just let them all down without having some kind of a restriction on it. I mean, we would be in that position, whether we wanted them played or not.

Q. Would the indiscriminate playing of your composi-[fol. 735] tions interfere with the attendance of the public

to the theatre where your shows were being played?

A. I believe that definitely.

Q. Would that hold true likewise with respect to your motion pictures?

- A. I should think so, if they were over-exploited.

Q. In other words, a man would not want to pay \$3 to come to see your show if he could hear all of the music at the same time, would he?

A. If he heard too much of it it would become an old story. You see, in a play there is a role, there are other sets to play; if the music became old by the time we got around to playing the show out of town, it would be an old story, very often we would have to replace some of the songs, some of the very big hits in the old days, I remember a show would open in Chicago, such as—well, one shining example is "No, No, Nanette." It had three or four songs in it and that music was restricted until the show got to New York. They wouldn't even let the cabarets play it, for the reason I gave.

I remember particularly some man had another show, and the music was so plugged before it got to New York, that by the time the show got to New York it was not a big success at all, and they blamed it on the fact that the music

[fol. 736] had become too popular.

Q. As a rule, what does it cost to put on one of your musical shows?

A. Well, the music of the Music Box Revue cost as high as a quarter of a million dollars. I think it is possible to do a Broadway Musical for less than \$125,000 to \$150,000; some of them are done much cheaper.

Q. When you write for a musical show, you receive royalties from the management of that show, don't you?

A. That is right.

Q. Those royalties are based upon a box office figure, are they not?

A. That is right.

Q. You receive a certain percentage of that; is that right?

A. That is right.

Q. And taking some of your shows, like the Music Box Revue, what percentage did you receive from the box office

while the show was playing?

A. Well, in those days I received three per cent of the gross of the show and the authors would receive—I forget what—I forget what it was now, a certain percentage, but they were very expensive shows to put on, in a revue, and did not pay as big a percentage as a straight show.

Q. What did you receive as a weekly revenue, say, for [fol. 737] one of your box office revues, from that source?

A. Well, the show would play, we were charging around \$5.50 at the time, and I should think it would play a \$30,000 week, so it would average close to \$1,000 a week.

Q. And what was the average run of your Music Box .

Shows?

A. Oh, they played two years.

Q. In New York?

A. In New York they played a year, and then we would send it on tour a year.

Q. You received weekly royalties based upon the box office

in-take wherever the show played?

A. That is right.

Q. That holds true with respect to the Ziegfeld Follies, for which you wrote the music?

A. Yes.

Q. And every other show?

A. The Ziegfeld Follies, as a matter of fact, paid more. You see. I own 50 per cent of the Music Box Revues, the show, so I would put myself down for lesser royalties. The Ziegfeld Follies Revue paid me 5 per cent.

Q. And did that go on for a long period of time?

A. Yes.

Q. Is that a substantial part of the revenues that you [fol. 738] received from the writings of your compositions?

A. Very substantial.

Q. What did you receive for writing some of these moving pictures?

A. Well, the first one I did, "Top Hat," paid me a flat sum against 10 per cent of the gross, and I would say—I

haven't the figures here, but I would say "Top Hat" made close to \$255,000 to \$275,000.

Q. What did you obtain for writing "Alexander's Ragtime Band"?

A. The picture, you mean?

Q. For the picture, yes.

- A. Well, the final figures are not in, but I think eventually the picture will gross \$4,000,000, and my end of that picture should be anywheres from \$325,000 to \$350,000, I should think.
- Q. Now, you consider that right of restriction of your musical compositions a very valuable right?

A. Very valuable.

Q. If that right were lost to you, would you continue to write for music productions for the stage and for pictures?

- A. I doubt very much that the producers of musical shows or even pictures would enter into these contracts unless [fol. 739] we had some kind of a restriction on the songs. In other words, I mean if all that I could give the producer of a musical show is just the right to use the music, without the right of restriction, if I didn't have the right of control over the work and to restrict them, what would stop any cabaret or Billy Rose, instead of paying writers to write stuff for them, from using new production numbers? Take "Easter Parade," they could say "It's a very nice song; I figure we'll do it in our cabaret." They have tried to do it and we have stopped them.
- Q. When did you join the American Society of Composers, Authors and Publishers, Mr. Berlin?

A. I am one of the founders.

Q. Can you give us the year that was founded?

A. Yes, I think it was 1914.

Q. And have you been a member of the Society ever since?

A. Yes, sir.

Q. You are not on the Board of Directors, are you?

A. No, sir.

Q. Now, did you ever in your life receive a penny for the public performance for profit of any of your musical compositions prior to 1914?

Mr. Boggs: I object to the question on the ground that [fol. 740] it is immaterial and irrelevant.

Mr. Frohlich: You may answer.

A. No.

Q. When for the first time did you ever receive any compensation for the public performance for profit of any of your musical compositions?

A. Well, I don't know the exact year; I think it was in

1921. I mean, the records would show that.

Q. From whom did you receive those moneys?

A. From ASCAP.

Q. Have you been getting those moneys ever since from ASCAP?

A. Yes, sir.

Q. On a quarterly basis?

A. That is right.

Q. If you know, what were the conditions prior to 1914 that made it necessary to found the American Society of Composers, Authors and Publishers?

A. Well, they just played our music promiscuously, they

never paid anything for it.

Q. In those days did any writer, to your knowledge, obtain any compensation for the public performance for profit of his musical compositions?

Mr. Boggs: That is objected to as being irrelevant and [fol. 741] immaterial.

Mr. Frohlich: You may answer.

A. No, not that I know of.

Q. Did any publisher or any other owner of music, copyrighted or otherwise, receive anything for those compositions to your knowledge?

Mr. Boggs: That is objected to as irrelevant and immaterial.

A. No.

Q. Well, suppose you search your memory for a moment and tell us, if you can recall, any performance, right here in the City of New York, which played your musical compositions prior to 1914, without paying you any money.

A. Well, they all did.

Mr. Boggs: Same objection.

Q. Were there cabarets in New York at that time?

A. Yes, very many.

Q. Did cabarets play your music?

A. All of them played it.

- Q. Was your music played in places of entertainment outside of New York City?
 - A. Yes.
 - Q. You heard it played yourself?
 - A. Yes.
- [fol. 742] Q. Was it played in motion picture theatres?
 - A. That is right.
 - Q. Was it played in dance halls?
 - A. That is right.
 - Q. In hotels?
 - A. Yes, sir.
- Q. Were you able to collect any compensation for the public performance of those compositions?
 - A. No, sir.

Mr. Boggs: The same objection.

- Q. Did the situation prevailing in New York City with respect to this playing of compositions also prevail in other cities of the United States?
 - A, Yes, sir.
- Q. And you have traveled extensively throughout the United States?
 - A. I did in those days, yes, sir.
- Q. And you heard your music played and performed in various establishments prior to 1914 all over the country, and you received no compensation for such performances?
 - A. Yes, sir, that is right.

Mr. Boggs: The same objection.

- Q. Now, would you tell us what you received since say, [fol. 743] for the past five years, on an average, from the American Society of Composers, Authors and Publishers for your public performance rights.
- Mr. Boggs: Will you bring out whether he is talking about himself personally or as a member of his firm.

Mr. Frohlich: No, I am talking about him personally. I will preface that before I ask that question:

- Q. Are you a member personally of the American Society of Composers, Authors and Publishers?
 - A. As a writer, yes.
 - Q. Apart from your organization of Irving Berlin, Inc.?
 A. Yes.

- Q. And as a personal writer or member, are you classified as a writer member?
 - A. Yes.
 - Q. Do you receive compensation as a non-personal writer?
 - A. Yes.
- Q. Can you tell us what you personally received as a writer from ASCAP for the past five years on an average?
- A. Well, I would have to examine the records; they have [fol. 744] changed.
- Q. You can give us approximate figures; we do not care for the actual figures.
- A. Well, I should think about on an average possibly of \$12,000 to \$15,000 a year.
 - Q. You are classified in Class A?
 - A. AA.
 - Q. AA?
 - A. Yes.
 - Q. Are there any other writers in that classification?
 - A. Yes, sir.
- Q. Now, is the money you receive from ASCAP a substantial part of your revenue as a writer?
 - A. No, sir.
 - Q. What is the most substantial part?
- A. My receipts from the ASCAP and box office royalties and the percentages from the showing of motion pictures.
- Q. Now, do you keep yourself informed on the customs and usages in the business generally, in the music business?
 - A. Will you be a little more specific?
- Q. Well, now, for instance, is it the custom for music publishers to make contracts with various users of music [fol. 745] for the purpose of interesting them in their musical compositions?
 - A. That is right.
 - Q. Does your firm, Irving Berlin, Inc., follow that custom?
 - A. Yes, sir.
 - Q. Does it employ men for that purpose?
 - A. Yes, sir.
 - Q. What do you call those men?
 - A. Contact men.
- Q. And to your knowledge, do these men go around to various radio stations from time to time?
 - A. That's right.
 - Q. Can you tell us whether or not those men contact these

radio stations for the purpose of interesting them in your music?

A. That is right.

Q. I mean music of your corporation?

A. That is right.

Q. And do you know what they do, how they go about it?

A. Well, the usual procedure is, when a new song is published, the custom is to print up copies and make it available for them, and they come and demonstrate them. Some-[fol. 746] times they come to my office and demonstrate it in my—rather, for my personal compositions, when a so-called new Berlin score comes out, they contact us in many cases.

Q. Now, does your firm make a practice of urging radio broadcasters to perform the music published by your firm?

A. To urge them?
Q. To urge them.

A. No.

Q. As a matter of fact, if there is any urging, where does it come from?

A. Well, I am sorry, I don't understand the question. I am trying to answer it, and I would like to answer.

Q. Answer it any way you can.

A. Well, we have an enormous catalogue of music; I mean, you can't possibly treat one song as you would another. For instance, we have a catalogue of thirty-odd years of work. I have bought up all of my old copyrights from the firm of Watterson, Berlin & Snyder, and we have requests every day, and some of them we have to refuse because they are calling for your valuable copyrights. For instance, one broadcast comes next Monday, one of many such broadcasts by Andre Kostelanetz. He is doing a half hour of a Berlin broadcast, finishes with "God Bless America." [fol. 747] Q. On what station?

A. It is on a Columbia station.

Q. Columbia Broadcasting System?

A. Columbia Broadcasting System. Because it is Lincoln's Birthday he is using that as his closing number. Well, certainly we don't contact him to get that; he would come for that. We have dozens of old valuable songs that they are very glad to get.

If we publish a new song we show them the new song, and of course a well known writer will get the preference through his reputation. They will favor—there are some

songs that they will favor in the face of others. But to boil it down to answering the question of who urges who, I think it is a little difficult. Certainly a contact man can't make anyone play a song that he doesn't want to play.

Q. Now, you testified with reference to the Berlin half hour which is going to be played next week by the Columbia Broadcasting System over the air. Now, does the Columbia Broadcasting System, or any broadcasting system, pay you any separate royalty for the use of your numbers on that half hour?

A. No, sir.

Q. Now, isn't it a fact that a half hour is equivalent to [fol. 748] practically an entire stage production or a motion picture of your music?

A. It is a most valuable right. It would be equivalent to a half hour of what they did in "Alexander's Ragtime Band." The picture ran for an hour and fifteen minutes. It included biographical sketches of the song, and it contained biographical material about the composer.

Q. And that half hour is hooked up with various stations throughout the country affiliated with the Columbia Broadcasting System?

A. Yes.

Q. Over their national hookup?

A. Over their national hookup.

Q. And for that half hour of your music the Columbia Broadcasting System pays you nothing except the royalties that it pays to the American Society of Composers, Authors and Publishers?

A. That is right.

Q. So that you are receiving for that half hour just your proportion from the American Society of Composers, Authors and Publishers, whereas, for a half hour of your songs from stage productions or motion pictures you receive all the way from \$100,000 to \$400,000; is that right?

A. Well, I don't know whether you mean——
[fol. 749] Q. You received as high as \$325,000?

A. That's right, but I don't know whether you could make that comparison; but certainly in a smaller sense, this is exactly the same right without getting paid a percentage. In other words—I will go further: if there were no ASCAP they would definitely have to pay a percentage on these performances, all stage performances.

Q. And do you consider that radio is paying you today an adequate compensation for the public performance for profit on your musical compositions?

Mr. Boggs: The question is objected to as immaterial and irrelevant.

Mr. Frohlich: You may answer.

A. Oh, definitely not.

Q. Is "God Bless America" on the restricted list today?

A. Yes, sir.

Q. And can you state why it was placed on the restricted list?

A. I may say "God Bless America," to my way of thinking, is a shining example of why we restrict songs. If "God Bless America" had not been restricted, by now it would have been dead as a song. As it is, it has just been done by Kate Smith, who introduced it, and through her single [fol. 750] performance it is being sung in hundreds of schools and educational groups and churches. And I venture to say that "God Bless America" will be the most important song I have in my catalogue. That is, as I said, a shining example of what restriction of a song means.

Q. Would you permit any swing orchestra to perform

it today?

A. No, sir. If a swing orchestra performed "God Bless America," it would place a completely different construction and character on the song.

Q. Would it cheapen the song?

A. Completely. Not only cheapen it, but kill it.

Q. Would it destroy the educational quality of the song?

A. It would destroy the educational quality and everything the song was intended for.

Q. Would you permit a song like that to be performed over the radio sponsored by an advertiser who . Ils liquor or other beverages?

A. No, sir.

Mr. Boggs: The question is objected to as immaterial and irrelevant.

Q. Do you want to retain the right to restrict this particular song?

[fol. 751] A. I certainly do.

Q. Do you deem that right valuable to you for your repu-

tation and your prestige, as well as commercial valuability; do ou deem that right valuable?

A. The most valuable right I have, much more than what

the song earns.

Q. Going back to those hits that you used to write prior to 1923, how long a period were those songs popular?

A. They are still popular.

Q. Well, take some of your songs that sold as high as a million copies, for how long a period were they actually selling?

A. They sold for a period of two or three years.

Q. Two or three years?

A. May I answer in my own way?

Q. I think I understand what you are trying to get at, and I will make a comparison. Well, you take a song like "Alexander's Ragtime Band," it was written in 1911, and it took two or three months, it was not an instantaneous success, it was a difficult song to play, it had a long range, and it had something a little different for that particular time, and the result was it took two or three months to get on, as we say, but once it did get on, it stayed there, [fol. 752] stayed there for two years. And so I would say the first sales of "Alexander's Ragtime Band" during that particular time-I haven't the figures-but the sales were around 1,500,000 copies, and the sales kept close—it's like a favorable chart; once I finally got it there it kept on an even line, up on top, for possibly six months, and then gradually came down to the bottom, and then was up for a long time, until it was revived.

Now, if you want a comparison as to what happens to-

Q. Yes, that is what I mean.

A. Take the outstanding songs that I have had since radio, say, in the "Top Hat" Astaire-Rogers picture; it was introduced by Fred Astaire and was immediately liked, apart from the picture. It was introduced before the picture opened, and immediately the song, everyone wanted to do it. They all had it, they did it for two months, I would say three months. The sales went up immediately, reaching a peak, and when up there immediately sold, I should think, about 200,000 copies; and then overnight dropped from up there to here.

Then "Cheek to Cheek" is very rarely played now, un-

less they play a return program, and they will include it because it happens to be one of my songs.

I am trying to make a comparison of two socalled hit

[fol. 753] songs.

Q. Would you say, Mr. Berlin, from your knowledge of the business, that this comparison holds good generally on hit songs prior to 1923 and hit songs after 1923?

A. Definitely.

Q. What is that due to today?

A. Forgive me if I can't answer that. In my opinion, the most important thing is that music is over-exploited today, as it has killed the possibility of a song living after its natural life. By that I mean, the songwriters of today haven't got a chance, haven't got the chance that the old fellows had, who had an opportunity to build up a socalled catalogue, the thing to leave to their estate, to their children, because songs are killed off today. And history will show that is the record, it will show there are very few songs that have been made popular through radio that have a socalled lasting quality.

There are shining examples, such as "I'm Heading for the Last Roundup," and a few others. So, in my opinion, I think one of the most important things that has happened in the way of hurting the popular song of today, is that it hasn't a chance to become part of the American people.

Q. Now, take the popular songs that you wrote many years ago: have you renewed any of those songs when the [fol. 754] original term expired?

A. Yes, sir; I have renewed them all.

Q. And do you expect to renew all your other songs when the original term expires?

A. Yes.

Q. And has that renewal right been very valuable to you?

A. Very valuable.

Q. In your own case, when you renew your songs, you turn them over to your own company for a period of 28 years, don't you?

A. Exactly.

Q. Have you taken any of the songs that you renewed and turned them over to any other publisher?

A. No, sir.

Q. Do you think, in your opinion, that the renewal rights of the new songs that you have been writing in the past few years will be as valuable to you?

Mr. Boggs: The question is objected to as irrelevant and immaterial.

Mr. Frohlich: You may answer.

A. No, I do not.

Q. Do you think that the new songs that you have written, including all of your hits, within the past ten years, [fol. 755] will have that parental value that your old songs had?

Mr. Boggs: The same objection.

A. Definitely not.

Q. To what do you attribute that change?

A. As I said, I think it is due to over-playing, of getting something all at one time, and they haven't a chance—when I say "they", I mean the public—the music buying and music loving public who haven't a chance to digest a song of to-day. In other words, I think they just listen to songs to-day, they don't sing them.

Q. The public doesn't buy the sheet music and play it in the home?

A. That is right.

Q. They simply listen to them on the radio?

A. That is right.

Q. Would you say that the radio is a sort of furnace that burns up your music?

A. Definitely. We can't write them fast enough for radio.

Q. Is it necessary to-day to compose more music in order to fill the popular demand for new music?

A. Very definitely.

Q. I show you this list of compositions and ask you whether you recognize that? Is that a true and correct list [fol. 756] or a partial list of compositions that you composed?

A. Yes, sir.

Mr. Frohlich: I offer it in evidence.

Mr. Boggs: No objection.

(List received in evidence and marked Complainants' Exhibit 48 of this date.)

Mr. Frohlich You may cross-examine.

Cross-examination.

By Mr. Bennett:

- Q. Mr. Berlin, were you ever a member of the Board of Directors of ASCAP?
 - A. No, sir.

Q. At no time?

A. Only for one year, in 1914.

Q. I think you stated that prior to the organization of ASCAP you received no income from the public performance for profit of small rights.

A. That's right.

Q. Of your songs. Did you at any time prior to 1914 ever endeavor to obtain a fee from a cabaret, a motion picture theatre or other establishment for the privilege of performing the small rights on your songs?

[fol. 757] A. Did I personally? No. sir.

Q. Do you know anybody who did prior to 1914?

- A. Well, I know a group of us got together around that time, through Victor Herbert, but I don't know of any individual: no. sir.
- Q. That was in 1914, which gave rise to the organization of ASCAP, did it not?

A. That is right.

Q. Did you prior to the organization of Irving Berlin, Inc., in 1919, personally obtain the copyrights on your compositions, or did you sell those to the publisher? Did the publisher acquire those copyrights?

A. The publisher acquired them.

Q. And at the present time and since the organization of Irving Berlin, Inc., does Irving Berlin, Inc. acquire the copyrights?

A. That is right.

Mr. Bennett: Thank you, that is all. Mr. Frohlich: Just one question.

Redirect examination.

By Mr. Frohlich:

Q. Do you know whether the users in New York City, I believe you were living in New York in 1914?

[fol. 758] A. Yes, sir.

Q. Do you know whether the users in New York City

commenced to pay to ASCAP in 1914, or at any time thereafter, any compensation for the public performance for profit of your musical compositions voluntarily?

A. I didn't hear that.

Q. Let me ask it again. Did the users voluntarily offer to pay ASCAP compensation for the public performance for profit of your musical composition or the musical compositions of any other members of ASCAP?

A. Did they pay any?

Q. Did they offer voluntarily to pay any in 1914, after the organization of ASCAP?

A. No, sir.

Q. Do you know from your own personal knowledge how ASCAP managed to compel the users to pay anything for these rights?

Mr. Boggs: I object to the question as it is not the best evidence.

Mr. Frohlich: You can tell us the story, if you know.

A. Well, I would be very vague on that story.

Q. Tell us generally just what you know.

A. Well, as I remember, we had to start many writers' [fol. 759] suits, and we worked like dogs to try to get them to pay something, until eventually, I think it was in 1921 first, so much so that we were terribly discouraged at one time.

Mr. Frohlich: That is all.

The Witness: May I volunteer one

Q. Do you want to amplify that answer? All right; go ahead.

A. No.

Mr. Frohlich: That is all.

Mr. Bennett: That is all.

(Witness excused.)

HERMAN GREENBERG resumed the stand:

Direct examination (continued).

By Mr. Frohlich:

Mr. Frohlich: I offer in evidence pages 27, 30 and 31 of a document entitled "United States Department of Commerce, Daniel C. Roper, Secretary; Bureau of the Census, William L. Austin, Director of the Census of American Business, 1933, a Civil Works Administration Project, Services, Amusements and Hotels, Volume 1, United States [fol. 760] Summary by Kinds of Business and by States", containing the Seal of the Department of Commerce of the United States of America, dated May, 1935.

It is stipulated that photostatic copies will be put in evidence. I assume that there will be no objection to the com-

petency.

Mr. Boggs: I object only to it on the ground of irrelevancy and immateriality.

(Received in evidence and marked Complaniants' Exhibit 49 of this date, 49-A, 49-B, 49-C.)

Mr. Frohlich: I offer in evidence Table 19, Table 27, Table 28, Table 30 and Table 39, contained in a document entitled "Federal Communications Commission, Accounting Department, Summary of Information Submitted to the Commission by Broadcast Networks in Response to Laws requesting financial data in connection with network operations, and summary of responses by broadcast stations to Commission Order No. 38, 1937, Summary of responses by broadcast stations, program service and personnel question-aire, week beginning March 6, 1938, submitted at a hearing on Rules and Regulations governing standard broadcast stations, docket 5072-A, June 6, 1930-38, numbered in the right-hand corner 27615, as one exhibit. [fol. 761] Mr. Boggs: Same objection.

Mr. Frohlich: But no objection as to comp-tency?

Mr. Boggs: No objection as to competency.

(Received in evidence and marked Complainants' Exhibits 50-A to 50-E inclusive, of this date.)

By Mr. Frohlich:

Q. Mr. Greenberg, did you at my request prepare a compilation of the radio station rates in the State of Florida taken from the March 1929 and January 1930-1939 issues of the Radio Advertising Rates and Data?

A. I did.

Q. And is that a true and correct compilation table from that magazine?

A. Yes, sir.

Mr. Frohlich: I offer it in evidence.

Mr. Boggs: I object to it as immaterial and irrelevant, and the defendant reserves the right to put in other evidence corrective of that shown.

Mr. Frohlich: I will offer it subject to correction with any other data you may desire to put in.

No objection to competency?

Mr. Boggs: No.

(Received in evidence and marked Complainants' Exhibit [fol. 762] 51, of this date.)

Mr. Frohlich: I will offer in evidence page 59 of the document entitled "United States Department of Commerce, Daniel C. Roper, Secretary, Bureau of the Census, William L. Austin, Director of Census of Business, 1935, Radio Broadcasting, October, 1936," bearing the imprint of the seal of the Department of Commerce, United States of America.

Mr. Boggs: I make the same objection to this category of present exhibits and to all exhibits of this type.

Mr. Frohlich: But not as to incompetency?

Mr. Boggs: No.

Mr. Frohlich: May I at this time substitute a photostat for the original?

Mr. Boggs: That may be done with documentary exhibits.

(Received in evidence and marked Complainants' Exhibit 52, of this date.)

Mr. Frohlich: I will offer in evidence page 4, of a document entitled "United States Department of Commerce, Daniel C. Roper, Secretary, Bureau of the Census, William C. Austin, Director of Census of Business, 1935, places of amusement, April, 1937," bearing the imprint of the seal [fol. 763] of the Department of Commerce, United States of America.

Mr. Boggs: The same objection.

(Received in evidence and marked Complainants' Exhibit 53, of this date.)

Mr. Frohlich: I offer in evidence page 4, of the document entitled "United States Department of Commerce, Daniel C. Roper, Secretary; Bureau of the Census, William L. Austin, Director, Census of Business, 1935, Hotels, April,

1937", bearing the imprint of the seal of the Department of Commerce, United States of America.

Mr. Boggs: The same objection.

Mr. Frohlich: But not objected to on the ground of incompetency?

Mr. Boggs: Not objected to on the ground of incompetency.

(Received in evidence and marked Complainants' Exhibit 54, of this date.)

Q. Mr. Greenberg, did you make a compilation of the monthly chain income of the three chains, the National Broadcasting Company, the Columbia Broadcasting System and the Mutual Broadcasting System, from 1930 down to and including 1939, on a monthly basis?

[fol. 764] A. I did.

Q. And where did you obtain that information?

A. Oh, from various sources, broadcasting, a variety of publications.

Mr. Frohlich: I will offer it in evidence subject to correction.

Mr. Boggs: Same objection.

(Compilation received in evidence and marked Complainants' Exhibit 55 of this date.)

Q. Did you compile at my request, Mr. Greenberg, data giving the operating power of the radio stations in the State of Florida from the year 1929 down to and including the year 1939, from March 1929, January 1930-1939 issues of Radio Advertising Rates and Data?

A. Yes, sir.

Q. Is that a true and accurate compilation of the statistical information contained in those publications?

A. Yes, sir.

Mr. Frohlich: I offer it in evidence subject to correction. Mr. Boggs: Same objection.

(Compilation received in evidence and marked Complainants' Exhibit 56 of this date).

Q. Mr. Greenberg, I show you a photostat of two pages, [fol. 765] respectively pages 190 and 192 of the 1939 Year

27-610-611

Book number of "Broadcasting" and ask you whether you made the photostats from that magazine.

A. I had the photostats made.

Mr. Frohlich: I offer them in evidence subject to correction.

Mr. Boggs: Same objection.

(Received in evidence and marked Complainants' Exhibit 57 of this date.)

Mr. Frohlich: I offer in evidence photostats of pages 174 and 176 of the magazine entitled "Broadcasting," 1940 Year Book Number, subject to correction.

Mr. Boggs: Same objection.

(Received in evidence and marked Complainants' Exhibit 58 of this date.)

Mr. Frohlich: I offer in evidence photostats of pages 196, 198, 199, of the 1939 Year Book Number of the magazine entitled "Broadcasting", subject to correction.

Mr. Boggs: Same objection.

(Received in evidence and marked Complainants' Exhibit 59 of this date.)

Mr. Frohlich: I offer in evidence pages 186, 188, 189, of the 1940 Year Book Number of the magazine entitled [fol. 766] "Broadcasting", subject to correction.

Mr. Boggs: Same objection.

(Received in evidence and marked Complainants' Exhibit 60 of this date.)

Mr. Frohlich: I offer in evidence photostatic copies of pages 198, 199 of the 1940 Year Book Number of "Broadcasting", subject to correction.

Mr. Boggs: Same objection.

(Received in evidence and marked Plaintiffs' Exhibit 61 of this date.)

Mr. Frohlich: I offer in evidence page 100 of the 1939 Year Book Number of "Broadcasting", subject to correction.

Mr. Boggs: Same objection.

(Received in evidence and marked Complainants' Exhibit 62 of this date.)

Mr. Frohlich: I offer in evidence pages 110 and 112 of the 1940 Year Book Number of "Broadcasting," subject to correction.

Mr. Boggs: Same objection.

(Received in evidence and marked Complainants' Exhibit 63 of this date.)

Mr. Frohlich: I offer in evidence page 74 of the 1940 Year [fol. 767] Book Number of "Broadcasting", subject to correction.

Mr. Boggs: Same objection.

(Received in evidence and marked Complainants, Exhibit 64 of this date.)

Mr. Frohlich: I offer in evidence page 76 of the 1939 Year Book Number of "Broadcasting", subject to correction.

Mr. Boggs: Same objection.

(Received in evidence and marked Complainants' Exhibit 65 of this date.)

Mr. Frohlich: I offer in evidence page 78—I withdraw that—an unnumbered page, with the penciled notation, page 308, of "Broadcasting" Year Book of 1940, subject to correction.

Mr. Boggs: Same objection.

(Received in evidence and marked Complainants' Exhibit 66 of this date.)

Mr. Frohlich: I offer in evidence page 78 of the 1939 Year Book of "Broadcasting", subject to correction.

Mr. Boggs: Same objection.

(Received in evidence and marked Complainants' Exhibit 67 of this date.)

[fol. 768] Mr. Frohlich: I offer in evidence pages 179 and 191 of the 1940 Year Book of "Broadcasting", as one exhibit, A and B, subject to correction.

Mr. Boggs: Same objection.

(Received in evidence and marked Complainants' Exhibits Nos. 68-A and 68-B of this date.)

Mr. Frohlich: I offer in evidence page 70 of the 1940 Year Book of "Broadcasting", subject to correction.

Mr. Boggs: Same objection.

600

(Received in evidence and marked Complainant's Exhibit 69 of this date.)

Mr. Frohlich: I offer in evidence an advertisement contained in the magazine "Broadcasting", issue of October 15, 1937, subject to correction.

Mr. Boggs: Same objection..

(Received in evidence and marked Complainants' Exhibit 70 of this date.)

Mr. Frohlich: I offer in evidence page 197 and page 195 of the 1939 Year Book of "Broadcasting", as one exhibit, A and B, subject to correction.

Mr. Boggs: Same objection.

(Received in evidence and marked Complainants' Exhibits 71A and 71B of this date.)

[fol. 769] Mr. Frohlich: I offer in evidence page 216 and an unnumbered page of the 1939 Year Book of "Broadcasting", as one exhibit, A and B, subject to correction.

Mr. Boggs: Same objection.

(Received in evidence and marked Complainants' Exhibits 72A and 72B of this date.)

Mr. Frohlich: I offer in evidence page 79 of the 1939 Year Book of "Broadcasting", subject to correction.

Mr. Boggs: Same objection.

(Received in evidence and marked Complainants' Exhibit 73 of this date.)

Mr. Frohlich: I offer in evidence pages 304, 305, 306, of the 1940 Year Book of "Broadcasting", subject to correction.

Mr. Boggs: Same objection.

(Received in evidence and marked Complainants' Exhibits 74A, 74B and 74C of this date.)

Mr. Frohlich: I offer in evidence one unnumbered page and page 185 of the 1940 Year Book of "Broadcasting", subject to correction.

Mr. Boggs: Same objection,

(Received in evidence and marked Complainants' Exhibits 75A nad 75B of this date.)

[fol. 770] By Mr. Frohlich:

- Q. Mr. Greenberg, have you at my request made a compilation of the gross license fees collected in the United States by the American Society of Composers, Authors and Publishers in the years 1935, 1936, 1937, 1938 and 1939?
 - A. I did.
- Q. And did you also in that compilation compile the figures of radio study of the American Society of Composers,
 Authors and Publishers for the same years?
 - A. Yes, sir.
 - Q. And did you add those totals up?
 - A. Yes, sir.
 - Q. And were those taken from the books of the Society?
 - A. Yes, sir.
 - Q. Are they true and accurate?
 - A. Definitely.
 - Mr. Frohlich: I offer it in evidence.
 - Mr. Boggs: No objection.

(Compilation received in evidence and marked Complainants' Exhibit 76 of this date.)

- Q. Did you from your books, Mr. Greenberg, make a compilation of the amounts which were received by the [fol. 771] American Society of Composers, Authors and Publishers from the foreign societies for the years 1936, 1937, 1938 and 1939; also the sums which were paid by the American Society to such foreign societies?
 - A. I did.
- Q. Does this document I hand you represent such compilation?
 - A. It does.
 - Q. Is it true, accurate and correct?
 - A. Yes, sir; according to our records.
- Q. And were these payments actually received and actually made?
 - A. Yes, sir.
 - Q. Pursuant to the contracts in evidence?
 - A. Yes, sir.
 - Mr. Frohlich: I offer it in evidence.
- Mr. Boggs: Let me ask a preliminary question on this, please.
 - Mr. Frohlich: Yes,

By Mr. Boggs:

Q. Mr. Greenberg, this document offered in evidence as Plaintiffs' Exhibit 77, this is based entirely on actual receipts and actual payments, not merely earned payments or earned receipts?

[fol. 772] A. No, sir; actual payments received and paid

out.

Mr. Boggs: No objection.

(Compilation received in evidence and marked Complainants' Exhibit 77 of this date.)

By Mr. Frohlich:

Q. Now, Mr. Greenberg, did you at my request make a compilation of the moneys that were paid by the American Society of Composers, Authors and Publishers to the plaintiffs in this action, to wit, Gene Buck, Carl Fischer, Inc., G. Schirmer, Inc., Irving Berlin, Inc., Deems Taylor, Olie Speaks, William J. Hill, the Estate of Ethelbert Nevin, the Estate of Victor Herbert, the Estate of John Philip Sousa, from the years 1932 to 1939, inclusive?

A. Yes, sir; I did make such a compilation.

Q. And was that compilation made from account books and records of the American Society of Composers, Authors and Publishers?

A. It was.

Q. Was it made under your supervision?

A. Yes, sir.

Q. And is it an accurate and true statement made from such figures?

A. That is correct.

Mr. Frohlich: I offer it in evidence.

[fol. 773] Mr. Boggs: I object to it on the ground it is immaterial and irrelevant, no objection to incompetency.

(Received in evidence and marked Complainants' Exhibit 78, of this date.)

Q. And so as to keep the record straight, in this compilation you speak of the Estate of Ethelbert Nevin. What relative is that?

A. Ann Paula Nevin.

Q. Of the plaintiff in this suit?

- A. Ann Paula Nevin is the widow.
- Q. Of Ethelbert Nevin?
- A. Yes.
- Q. And you state here the Estate of Victor Herbert. What relative is that?
 - A. Daughter.
 - Q. That is Ella Herbert Bartlett, his daughter?
 - A. Yes.
- Q. Jane Sousa, a plaintiff, is the widow of John Philip Sousa?
 - A. A widow of John Philip Sousa, yes.
- Q. And do these individuals now, Ella Herbert Bartlett, Jane Sousa, Anna Paula Nevin, receive the moneys represented in this compilation since the death of their respective predecessors in interest?

 [fol. 774] A. That is correct.

Mr. Frohlich: That is all.

Cross-examination.

By Mr. Bennett:

Q. Mr. Greenberg, one of the exhibits, I believe it was Plaintiffs' Exhibit 16, was a list of stations to which the broadcast stations of the United States ASCAP has granted free licenses, and I believe your testimony was that they were non-commercial stations, that they were not commercial stations; is that correct?

A. Yes, sir; that is my recollection, if that is the correct

exhibit.

Q. Now, has ASCAP ever issued a free license to any broadcast station which operates commercially for profit?

A. Not to my knowledge.

- Q. I believe you stated that in connection with Plaintiffs' Exhibits 17-A to 17-P inclusive, which was a list of broadcast stations licensed in Florida, contracts between ASCAP and broadcasting stations in Florida, that the licensed station WTAL was not now in force.
 - A. That is correct.
 - Q. Would you say that had been cancelled?

A. Yes, sir.

[fol. 775] Q. For what purpose was that cancelled?

A. It is my recollection that it was cancelled due to failure of the licensee to comply with the terms of the agreement.

Q. In what respect?

A. Making payments, reports.

Q. You mean they were behind in payments, or had not made payments?

A. Had not made certain payments that were past due or

became past due.

Q. Do you know, as a matter of fact, that radio station WTAL, owned by the Florida Capital Broadcast Company and Gilbert Freeman, its president, are under an injunction by the Court restraining them from making payment to ASCAP until such time as the present litigation is concluded and an adjudication has been had as to the constitutionality of the statute?

Mr. Frohlich: I object on the ground it is incompetent, irrelevant and immaterial. The witness has no knowledge of any litigation down in Florida between these broadcasting stations and themselves and their own officers and stockholders, and on the further ground that any litigation in Florida affecting any broadcasting station down there is [fol. 776] not binding on the American Society of Composers, Authors and Publishers, as they have not been made a party by effective service, and it is not binding on the American Society of Composers, Authors and Publishers.

Mr. Boggs: Answer the question,

A. I don't have any personal recollection of that litigation made reference to in the question, but the fact of the matter is that the payments were not made by the licensee under the contract and, after several requests, the contract was terminated in accordance with the terms of the lincense.

Q. Do you recall receiving a communication from the station, calling attention to the injunction, stating that to make the payments would place them in contempt of Court?

Mr. Finkelstein: We object to it on the ground that it would be hearsay, and not binding on the plaintiffs.

A. I don't have any definite recollection about receiving such communication. There is a possibility that there has been, but notwithstanding those communications, if they were received, our legal advice was to proceed as provided for by the agreement which we have.

Q. Do you recall receiving a visit from Mr. Gilbert Freemen some time during the latter part of the Summer of 1939? [fol. 777] Mr. Finkelstein: I object to it on the ground that any visit that Mr. Freeman might have made would be incompetent, irrelevant and immaterial and not binding on the plaintiff, and the question is "Do you recall him having made a visit?"

A. I don't recall any visit Mr. Freeman made to me during the year 1939. I have a recollection of a visit from a representative of this station, I think it was Freeman, a number of years ago, at the time that the station commenced operation, regarding negotiating for a license.

Q. Do you recall seeing in any other publication that an injunction had been issued against Station WTAL, prohibiting payments to ASCAP during the pendency of the

present litigation?

Mr. Finkelstein: I object to that on the ground that any such publication would be hearsay, not the best evidence, not binding on the plaintiffs.

Mr. Bennett: I call attention to the fact that defendant's counsel did not object on the same ground to a whole raft

of exhibits just'put into the record.

(Pending question read.)

A. I don't have any recollection of seeing any particular articles or reference to an injunction. I have a faint recollection of some litigation which that station had, come legal [fol. 778] litigation; the contents of it I do not have any recollection of.

Q. Mr. Greenberg, has ASCAP at any time made a compilation of musical compositions broadcast over NBC network, Columbia network, and certain other stations?

A. Yes, we have made some compilations of compositions broadcast over the networks mentioned, on the basis of

information furnished us by the networks.

Q. Did you make a compilation entitled "ASCAP Program Listings for 1935", which was printed some timeabout 1936, the first part of 1936?

A. I think there was such a compilation made.

Q. Will you produce a copy of that compilation for the year 1935.

A. The networks broadcast—is that what the question

Q. The publication known as "ASCAP Program Listings for the year 1935."

Mr. Frohlich: If it is available I do not see any objection to producing it. The witness offers to produce the document. If we have it you can have it.

Q. Has ASCAP made any subsequent compilations similar to that of 1935?

A. It is my recollection there is, not in the same way or [fol. 779] to the same extent.

Q. Will you produce copies of such additional compila-

A. I will be glad to, if they are available.

Mr. Frohlich: They will be marked Complainants' Exhibits 79 A, B and C.

Q. Did ASCAP publish a compilation entitled "Composers, Authors and Publishers throughout the World," dated January 1, 1936?

A. We did publish that, but whether there are extra copies around I am not ready to say. I will try and find a copy for this purpose.

Mr. Frohlich: And it will be put in evidence as Plaintiffs' Exhibit 80, to be produced at the trial.

Q. Has ASCAP compiled any supplemental list to the compilation of January 1, 1936?

A. My recollection is that there was a supplemental list—and there again I do not think there are any available ones. I will try and find one.

Q. Will you produce a copy at the trial?

Mr. Frohlich: If it is available, we will produce it at the trial and it will be marked Plaintiffs' Exhibit 81.

Q. I believe you stated that you were the assistant gen-[fol. 780] eral manager of ASCAP?

A. That is correct.

Q. What are your duties as assistant general manager!

A. Assistant to the general manager, particularly in the management and supervision of the operation of the Society from its business extent and supervising the other branches of its operations.

Q. Does ASCAP have various field offices scattered throughout the United States?

A. Yes, sir.

- Q. Are you in charge of the operation of those field offices?
 - A. To a great extent.
- Q. You have regular contact with the people who are on the ground handling those particular offices?
 - A. Yes, sir.
 - Q. Receive correspondence from time to time?
 - A. Yes, sir.
 - Q. Do you have a field office in Salt Lake City, Utah?
 - A. We have a field office in Salt Lake City.
 - Q. Who is in charge of that office?
 - A. It was in charge of Mr. Hugo Anderson.
- Q. Do you have a field office in Milwaukee, Wisconsin? [fol. 781] A. Yes, sir; we have an office there.
 - Q. Who is in charge of that office?
 - A. Robert Hess.
 - Q. Do you have an office in Indianapolis, Indiana?
 - A. Yes, sir.
 - Q. And who is in charge of that office?
 - A. Mr. Paul Summers.
 - Q. Have you an office in Minneapolis, Minnesota?
 - A. Yes, sir.
 - Q. Who is in charge of that?
 - A. Wayne Ewing.
 - Q. Do you know the agent well?
 - A. I know him. "Well" is a relative term.
- Q. You are well acquainted with him?
- A. I know him since his association, which is a period of about five to six years or thereabouts.
- Q. Do you receive reports and letters from him in the usual course of business?
 - A. Yes, sir.
- Q. Does ASCAP maintain a card index of any kind, or an index of the copyrighted musical compositions owned by its respective members?
- A. I don't know if we have such an index of copyrighted [fol. 782] musical compositions of its members. We are attempting to compile information as to copyrighted musical compositions.
- Q. How many individual items have you compiled in that index, approximately?
- A. I don't understand the question; "individual compositions"?

Q. Individual copyrights.

A. I would not be able to approximate that, because we have included all the information we could get our hands on, and it would run into a number of thousand.

Q. Have you compiled the list of publishers, music pub-

lishers, in the United States?

A. We have a list; I don't know how complete it might be; but we have some information as to the music publishers of the United States.

Q. Have you made available to certain users of music a card index of publishers, music publishers, in the United States, and also an index of musical compositions?

A. We made available to licensees all the information

we have relative to such information.

Q. Has that been compiled in any form for distribution to licensees?

- A. We have compiled information with regard to musical [fol. 783] compositions for service to broadcasting licensees.
 - Q. What form is that?
 - A. In a card index form.
- Q. Is it compiled in the form of a sticker to be placed on the card?
- A. A sticker that can be placed on the usual 2 by 4 card or $2\frac{1}{2}$ by 4, for the purpose of convenient filing.
- Q. Can you tell me how many publishers are listed on the card index?
- A. No, I couldn't answer that offhand, as to the number of publishers that are included in compositions furnished in that index, furnished to the broadcasting licensees I would not know that offhand. Of course, it includes not only publisher members of ASCAP, but all other publishers and copyright compositions of which we have been able to furnish information to broadcast licensees.
- Q. Will you produce a complete list of the stickers or cards, or either one, of the publishers which you have included in that index and which you have made available to licensees?
- A. Only the list of publishers? I see no objection to furnishing such a list.

Mr. Finkelstein: Do you want a list of the 84,000 compositions that accompany that list?

[fol. 784] Mr. Bennett: No, only the publishers.

Mr. Frohlich: We will produce that at the time of the trial.

Q. In the operation of ASCAP and in field offices, has ASCAP endeavored to force the acquisition of licenses through prohibiting remote control by radio broadcasting stations?

Mr. Finkelstein: Presently I object to the question be cause I do not understand it.

Mr. Bennett: Let me restate it.

Q. Does ASCAP endeavor to prevent a licensee, a broadcast licensee, from broadcasting a musical program by remote control from outside the station when that outside place is not licensed by ASCAP?

Mr. Frohlich: I object to that on the ground that the contract in evidence speaks for itself.

Mr. Boggs: He is asking about the practice now.

Mr. Finkelstein: Do you contend that a broadcaster has the right to rebroadcast an unlicensed program?

Mr. Bennett: I am not contending anything.

Mr. Finkelstein: I am trying to find the materiality of the question.

Q. I have asked you whether the licensed broadcast sta-[fol. 785] tion was prohibited by ASCAP from picking up by remote control and broadcasting a musical program from outside its own studio when the place where the pickup was not licensed by ASCAP.

Mr. Frohlich: I object to that on the ground that the contracts in evidence speak for themselves.

Mr. Finkelstein: On the further ground, as a matter of law, there is no obligation to authorize any licensee to broad-

cast an unlawful performance.y

Mr. Frohlich: On the further ground that the contracts in evidence clearly show that the broadcasters are limited to certain restrictions and limitations in their practice and cannot go beyond that, and it is not for this witness to give his opinion on those practices.

Now you may answer that.

Q. I want you to state what you actually do, not what is in the contract.

A. Now, to my knowledge, I don't know of a single instance where we have prohibited a broadcaster from pick-

ing up a remote control broadcast. I know I have never taken such a stand with a licensee, a broadcast licensee.

Q. Do you know whether it is a policy of ASCAP to prohibit such broadcasts?

[fol. 786] Mr. Frohlich: I object to that question on the ground that it is speculative and hypothetical and assumes a state of facts not in the testimony, and on the further ground that the policy of ASCAP is entirely immaterial, in view of the fact that the contracts between ASCAP and its licensees are now in evidence, and any policy of ASCAP is best evidence by those contracts.

A. Well, now, as I stated before, if ASCAP had a definite policy I would follow it. I, personally, have never to my recollection at this time restricted a broadcasting station from picking up a remote control broadcast; I have always tried to license the remote control independent of any influence upon the station.

Q. And you stated that you are in charge of field offices!

A. Yes.

Q. And have the local agents in charge of those particular field offices on the ground come under you?

A. They come under my supervision.

Q. They are subject to your orders?

A. They are.

Q. You stated you knew Hugo B. Anderson?

A. Yes, sir.

[fol. 787] Q. And that you received reports and letters signed by Anderson. I ask you whether the signature at the bottom of that letter is the signature of Mr. Anderson.

A. I think it is his signature; as a matter of fact, I would

say it is his signature.

Mr. Bennett: I offer it in evidence, and subject to a photostatic copy being made of it.

Mr. Frohlich: I object on the ground that it is incompetent, immaterial and irrelevant and not within the issues in this case. I have no objection to a photostat of the document in place of the original.

(Letter received in evidence and marked Defendants' Exhibit C.)

Q. I ask you whether this signature at the bottom of this letter is that of Robert A. Hess.

A. Yes, I guess it is his signature; it looks a little abbreviated.

Mr. Bennett: I offer it in evidence.

Mr. Frohlich: Objection is taken to this document on the same grounds as heretofore stated. No objection to a photostat being furnished in place of the original.

(Letter received in evidence and marked Defendants' Exhibit D.)

[fol. 788] Q. Is that signature that of Mr. Paul Summers? A. Yes.

Mr. Bennett: I offer it in evidence.

Mr. Frohlich: I make the same objection as stated above. No objection to a photostat being furnished in place of the original.

(Received in evidence and marked Defendants' Exhibit E of this date.)

Q. Is that the signature of Mr. Ewing?

A. I think it is.

Mr. Bennett: I offer it in evidence.

Mr. Frohlich: Same objection as above. No objection to a photostat being furnished in place of the original.

(Received in evidence and marked Defendants' Exhibit F of this date.)

Q. Mr. Greenberg, I believe you testified that you have been employed by ASCAP for the past 20 years?

A. About 20 years, I should say.

Q. In the course of that employment you acquired a great deal of experience, have you not?

A. I hope.

Q. As to the copyrights coming within the ASCAP repertoire?

[fol. 789] A. I have some information with reference to that subject.

Q. How many copyrights would you say come within the

repertoire of ASCAP?

A. Well, now, you are going to start having me think a little bit. My last recollection, when a compilation was made by the Copyright Office, there were recorded with all arrangements approximately 700,000 copyrighted songs, effective the date of this Act of 1909. I would say it does

not go in excess of 200,000 to 250,000, if it went that high.

Q. Have you ever claimed that ASCAP controls millions of copyrights?

Mr. Frohlich: I object to that on the ground that it is speculative and hypothetical, and incompetent, irrelevant and immaterial, and what he claims would not affect ASCAP or any rights of ASCAP.

A. No, I don't think I have ever made such claim, unless it was one of these exaggerated sort of conversations, which would not mean anything.

Q. You would not tell a licensee that you controlled millions of copyrights?

A. No, I don't see how we can precisely say millions of copyrights.

[fol. 790] Q. Would you claim that you controlled millions when you were endeavoring to license a licensee?

A. No, I don't think it would be necessary to make any such claim ordinarily.

Q. I ask you if that is your signature at the bottom of that letter.

A. Yes, that is my signature.

Mr. Bennett: I offer it in evidence. I offer a photostatic copy.

Mr. Frohlich: I object to that on the ground that it is incompetent, immaterial and irrelevant and not within the issues here.

There is no objection to furnishing a photostat in place of the original.

(Received in evidence and marked Defendants' Exhibit 6 of this date.)

By Mr. Boggs:

Q. Mr. Greenberg, I have just one question to ask you, with regard to those various compilations that have been put in evidence in connection with your testimony, which you say were made up from the books and records of ASCAP. Will you please state for the record whether you have taken the precaution to have those lists carefully checked as to accuracy.

[fol. 791] A. Yes.

Redirect examination.

By Mr. Frohlich:

Q. Mr. Greenberg, with reference to this letter, Defendant's Exhibit G, dated June 6, 1933, addressed to John G. Carey, Editor, Central Broadcast Company, Davenport, Iowa, will you tell us whether you had available at the time you wrote this letter any information which enabled you to make the statement that "the numbers run into millions and new ones are constantly being added"?

A. Well, at that time I was under the impression that there were within the repertory of the Society the quantity of copyrights as indicated by the letter, due to the large membership of the affiliated societies, but subsequent to this date, after making an inspection and investigation of the facts, my conclusion and opinion were different than in

that letter.

Q. Did you mean in that statement that you made in that letter that the numbers owned by members of ASCAP together with the numbers owned by foreign societies ran into the millions?

Mr. Boggs: I object to the question on the ground that [fol. 792] the answer is being put into the witness's mouth by counsel.

Mr. Frohlich: I don't think so.

A. As to the quantity of music copyrights within the repertoire as indicated in that letter, that was based not only upon copyrights of members of the American Society, but also of all members in the foreign societies, with which societies the American Society was affiliated, and there being 45,000 members within the membership of the foreign societies, I came to the conclusion, without any investigation, that the copyrights ran into the millions.

Q. Were you on June 6, 1933, assistant general manager

of the Society?

A. No, sir.
Q. What was your position?

A. I was assistant.

Q. Assistant to whom?

A. To the general manager.

Q. Assistant to the general manager?

A. Yes, sir.

Q. And at that time was the American Society affiliated with the various foreign societies whose contracts we have put in evidence?

A. There were many societies with whom the American

Society was affiliated.

[fol. 793] Q. At that time approximately how many members were there in the foreign societies?

A. Approximately 35,000 to 40,000, as I recall.

Q. Now, did you have in mind the copyrights owned by the members of the foreign societies when you said the numbers ran into millions?

A. Yes.

Mr. Boggs: Same objection as before.

Recross-examination.

By Mr. Bennett:

Q. Do you now claim, Mr. Greenberg, that ASCAP has no right to license the foreign copyrights?

A. No, sir; I make no such claim. I make no such state-

ment.

By Mr. Boggs:

Q. I understood you to say, Mr. Greenberg, in explaining your letter of January 6, 1933,—June 6th, rather,—Defendants' Exhibit G, that you had had reason since writing that letter to change the conclusion that you expressed in that letter?

A. That is right.

Q. And from that I infer that you have since changed your mind as to the right of the Society to license the for-

[fol. 794] eign copyrights?

A. No, that is a wrong conclusion of interpretation of my answer. From the large membership of the foreign societies, without making any investigation, I came to the natural conclusion that the copyrights of such a large membership would run into such a large number; subsequent to the writing of that letter a thorough investigation was made as to the copyrights in the Copyright Office under the present Act, and also what the maximum foreign copyrights were, and the conclusion was materially different from anything in that communication in evidence. But the Society, under its assignments with the foreign societies, controls

the performing rights of the works of the members of the foreign societies in the United States, and the foreign societies control the performing rights of the members of the American Society in their respective countries.

Q. Mr. Greenberg, did you ever correct the impression conveyed in that letter that there were millions of copy-

rights?

A. Well, no, I can't recall that I wrote a follow-up letter correcting that; but I think the general tone of the Society's attitude relative to its control of performing rights of copyrights and the nature of its members, as well as the work [fol. 795] of members of foreign societies with whom we are affiliated has clarified what the Society license makes available to such licensees.

Q. But you don't know whether you wrote to the addressee of that letter, changing that impression?

A. No, I don't think I have, if my recollection serves me

correctly.

Q. Will you please have a search made in your files, and if you find any further communication to the address of that letter vertaining to the matter about which I now inquire, produce it for the trial of this case.

A. I will check it:

It was Stipu ated that a copy of the Standard Uniform form of contract between composers and the Songwriters Protective Association would be produced upon the trial, to be marked Defendants' Exhibit B.

[fol. 796] IN UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF FLORIDA, GAINESVILLE DIVISION

GENE BUCK, as President of the American Society of Composers, Authors, and Publishers, et al., Complainants,

VS.

George Couper Girbs, et al., Defendants

Statement of Evidence

Be It Remembered, that commencing on the 15th day of April, 1940, at 9:30 o'clock A. M., in the Unitéd States Court Room, Post Office Building, Gainesville, Florida, the above entitled cause was tried before a three Judge United

States Court composed of the Honorable Joseph C. Hutchinson, Judge of the Circuit Court of Appeals, Fifth Circuit, the Honorable William J. Barker, Judge of the District Court for the Southern District of Florida, and the Honorable A. V. Long, Judge of the District Court for the Northern District of Florida; that on the trial of said cause, the complainants and defendants, to maintain the issues joined on their respective parts, introduced and offered before the said Court the following oral and accumentary evidence and interposed the objections and took the exceptions herewith noted:

[fol. 797] APPEARANCES:

Manley P. Caldwell, Esquire, Herman Finkelstein, Esquire, Louis D. Frohlich, Esquire, Frank J. Wideman, Esquire, counsel for Complainants, and Thomas J. Ellis, Esquire, Lucien H. Boggs, Esquire, Andrew W. Bennett, Esquire, counsel for Defendants.

COLLOQUY

The Clerk: Gentlemen, this is the case of Gene Buck, individually and as President of the American Society of Composers, Authors and Publishers; Carl Fischer, Inc., G. Schirmer, Inc., Irving Berlin, Inc., Deems Taylor—

Judge Hutchinson: You do not have to read it all.

The Clerk: Against George Couper Gibbs, Individually and as Attorney General of the State of Florida, Et Al.

Mr. Frohlich: The complainants are ready, your Honors. Mr. Ellis: The defendants are ready, your Honors, except as to the depositions. An offer was made by the plaintiff to supply any documents in their possession, without service or formal notice, and a request was subsequently made to furnish said documents, only some of which were furnished. The principal, missing documents have not been supplied which are contracts between the plaintiffs and the National Broadcasting Corporation and the Columbia Broadcasting Corporation. The defendants consider [fol. 798] these documents will have some bearing upon the issues, and we wish to renew the demand for them at this time, and to inform the Court that the demand has been made; a formal offer is of record.

Mr. Frohlich: We have produced each document, your Honors, called for with the exception of two contracts that

we did not have available at the moment. As a matter of fact, they are available to the State. These contracts are contracts made with the National Broadcasting Corporation and the—

Judge Autchinson: If you say they can have them, what

is the point in making the demand?

Mr. Ellis: We don't have them, your Honor.

Mr. Frohlich: I haven't them here yet, but they will be

here by air mail.

Mr. Ellis: There is one other matter with regard to the introduction of depositions taken in what is called the Nebraska Suit that either side may wish to introduce—subject to objections as to competency and materiality.

Mr. Frohlich: That's agreed.

Judge Hutchinson: Counsel for plaintiff will state the case and make it as intelligible to us as are our limitations.

Mr. Wideman: May it please the Court, I think a brief review of the history of the trial proceedings and the things that have occurred since the l. t hearing before this Court in Jacksonville will be helpful.

The original bill of complaint in this case was filed in [fol. 799] February of 1938, to restrain the operation of a Florida Statute that was passed in June, 1937, which placed certain restrictions on the sale of copyrighted music in Florida. About two months later this Court granted a restraining order against the operations of that Statute. The defendants appealed from that order to the United States Supreme Court on the ground of the failure of this Court to dismiss the bill of complaint, and on the ground that the jurisdiction of the Court had not been shown.

The Supreme Court affirmed the order of this Court in granting the temporary injunction, and thereafter, and shortly thereafter, the Legislature of the State of Florida passed another law; that was in June, 1939. The Complainants filed a Further Supplemental Bill of Complaint to restrain the operation of this new law, and this Court granted a second temporary injunction bringing the new law within the scope of the first temporary injunction that was granted.

That second injunction granted at the hearing in Jacksonville of October 19, 1939; the defendants have filed answer to the bill of complaint, a considerable amount of testimony has now been taken, and the case is here, before this

Court, for trial and on final hearing.

Now, at the last hearing in this case, the hearing of October, 1939, the Court directed that the parties proceed to take the greater part of their testimony by depositions. The complainants have complied with those instructions of the [fol. 800] Court. We have taken and filed some five hundred pages of testimony, and we have introduced nearly one hundred exhibits.

For the information of the Court, we might call attention more specifically to the testimony that has been taken since that hearing in Jacksonville by deposition, but it is lengthy and I will make no attempt even to give a brief resume of the substance of the testimony, but merely to indicate to the Court the names of the witnesses, and to—

Judge Hutchinson: Don't you think it would be a better idea first to state what the issues are that we are to try? Just what your bill complains of? Not the legal grounds but the grounds of fact upon which you rely since the depositions. Give us a sort of a pre-trial statement of the issues in controversy—not those not in controversy; if you do this we would be in a better position to follow the evidence. I am, in fact, kind of hazy on the issues. It is not clear in my mind. Just give me the issues.

Mr. Wideman: The original law passed by the Legislature in 1937, if the Court will recall, made it unlawful for any substantial number of composers, authors, and publishers to combine for the purpose of selling copyrighted music. All contracts then existing between any such combination and the users in plays, theaters, hotels, broadcasting companies, dance halls, and what not were made invalid and void, and under certain sections of the Statute a composer, author, or owner of the copyright was compelled to place on the sheet of music the price for the use of that [fol. 801] piece of sheet music for all purposes.

Judge Hutchinson: That particular piece as opposed to the general license?

Mr. Wideman: That's right, your Honor. That is to say, as opposed, as the Court says, to the blanket license issued by the society for the use of compositions of all of the members of the society. This law endeavored to compel each composer of copyrighted music, and there are thousands of such composers in the country and more than one thousand members of this society—to compel them to place on that sheet of music the price for which that sheet, the price for

which that sheet of music should be for all purposes. The Court, of course, recalls that under the copyright law he has a sort of a separate right—the exclusive right to the public performance of that in addition to the right of the sheet music and for its recording on phonograph records.

The 1937 law provided also that no suit might be brought within the State of Florida by the Society except through compliance with the law. This law also had very severe penalties; a person who violated the law was subject to a fine of not less than fifty dollars and not more than five thousand dollars, and he was also subject to imprisonment, a minimum term of one year and a maximum term of ten years. That, very briefly, were the provisions of the '37 law.

Now, as I understand it, the operation of that law enjoined-was enjoined, and this Court was affirmed by the [fol. 802] Supreme Court, and the mandate from the Supreme Court came down in April, 1939, and in less than two months' time the Legislature of the State of Florida had passed another law which we feel is merely supplementary to the first law, and which we think was more stringent than the first law. We endeavored to demonstrate at the prior hearings that the new law did not repeal the old law, but was merely supplementary to it. In addition to the provisions of the '37 law, this new law provided for a complicated system of registration with the Comptroller of the State of Florida, requiring each composer to file with the Comptroller's office the name of every composition that he seeks to sell in Florida, the owner of the copyright, the name of the person who is the owner of the public performing rights for profit, and a number of other things were required to be filed, as well as the payment of so much filing fee.

Mind you, that law provided that two or more persons should be regarded as an unlawful organization, whereas, the first law was a little bit more liberal in saying any substantial number of composers, authors, and publishers. The new law also provided that if two or more persons combine to market their product in Florida and one license was sold by them then they were required to—already having been required to file this list and the price opposite each composition to be paid, all users in Florida would have to try to go in and buy on a per piece or per use basis, namely: so much for each composition for each use.

Now, we contend pretty much on the same ground as our [fol. 803] original bill of complaint. It deprives us of our property without due process of law, it invalidates our contracts, and renders it impossible for us to market our product in the State of Florida.

Judge Hutchinson: That is legal theory. There are certain facts—issues which you think require proof. Now, what are those issues of fact which you think give you these rights? There is something, you think, you have got to prove. What are those facts? What are those facts that we

are going to try right now?

Mr. Wideman: I think, your Honor, that could just be stated by a short statement of what our twelve witnesses have testified to. Each of these witnesses has been a member of the American Society of Composers, Authors and Publishers for many years, and is familiar with its operations, and has a contract with the Society which he insists on

retaining and which he expects to renew.

The witnesses testified that prior to the formation of ASCAP it was an unknown thing for anyone to receive any compensation for the public performance for profit rights in copyrighted music. For the first seven years of ASCAP, while it was engaged in the struggle for recognition of the rights of composers and publishers, no compensation was received. Commencing in 1921 they began receiving quarterly distributions from ASCAP which have continued and increased until in recent years the witnesses or their companies have received sums ranging from nine thousand dollfol. 804] lars to one hundred thousand dollars through ASCAP. As Walter Fischer said, the receipts from public performance for profit rights through ASCAP are "the life blood of the music industry".

These twelve witnesses, whose testimony I am giving a brief resume of now, are twelve of the most prominent and outstanding composer of popular music in the country, and, I think, for that matter, in the world; Irving Caesar, Deems Taylor, a composer of music of a more serious nature, Harry and Will von Tilzer, Walter S. Fischer, publisher, George W. Meyer, and Irving Berlin. They emphasized that prior to 1923 the royalties received from the sale of sheet music and mechanical reproductions were substantial. It was not unusual for a song to sell over a million copies and to be popular for a long time, and the record sales were proportionate, but commencing in 1923 the situation changed

drastically. Where millions of copies were sold previously only thousands of copies are sold now, and while a song was good for a year or fifteen months, it lasts only a few weeks now. This change has been due to radio for two principal reasons. In the first place, the public is not interested in playing sheet music when it can hear the songs easily by merely turning on the radio. Secondly, the incessant use of songs over the radio quickly wears out their popularity.

The Society was organized, as the Court will recall, in 1914. It had a struggle for the first few years of its existence, and it was not until several years after it was or[fol. 805] ganized that it finally succeeded in compelling compensation for the public performance for profit of copy-

righted music.

Each of the witnesses testified that he could not operate independently in fixing prices for public performance for profit, nor in detecting or enforcing infringements. As Mr. Caesar said, the composer would have to become a "one man Gallup survey", or as Fred Ahlert said, even if the composer could operate independently, he would not have

any time left to think about writing songs.

That, of course, is the purpose of the Florida laws—to compel them to operate independently; each would have to investigate the various factors affecting the proposed use of music—such as the nature of the place, its size, financial ability, and so forth. Then, it would be necessary to employ investigators to detect infringements, and attorneys for advice on various rights and infringement suits. They agreed that the expense of operating separately would be prohibitive, and they could not afford such expense, and that the loss of ASCAP's services would be disastrous. As George Meyer said, "Without ASCAP, I would be driving a cab or something if I wasn't too old for that."

Just merely a statement of the situation in Florida makes the difficulty obvious. There are over three hundred places of amusement in the State of Florida that use copyrighted music, and who depend very largely for their existence on copyrighted music. If one man writing one song in the City [fol. 806] of New York should endeavor to get fair compensation for public performance, it would be necessary for him to contact all of these three hundred places of amusement and entertainment. The size of the establishment would have to be considered, the size of the audience he

would play to, and a great many other things. The difficulty of such negotiations are apparent, and are developed in this testimony. That is why, your Honor, these people never got payment for their property before the organization of ASCAP in 1914—the utter impossibility of negotiat-

ing individually or singly.

They also testified that it would be impossible, as a practical matter, to comply with the registration provisions of the 1939 law. In the first place, the compiling and furnishing of the required data would be a prohibitively expensive burden. As Mr. Meyer said, "It would take me the rest of my life to furnish the information". Mr. Fischer said, "God knows how it could be done in our case". And further, they could not make the required affidavit as to ownership of the performing rights because they are assigned to ASCAP and even without such assignment neither the composer nor the publisher owns the entire rights on any song.

Reference was made to the provisions of Sections 2A and B of the 1937 law requiring the affixing of prices for public performance for profit rights to sheet music and records. They explained the situation regarding these—that neither publisher nor the composer has any control over the manufol. 807] facturers of records once a number is permitted to be broadcast, and any manufacturer may record the number and sell the records by paying two cents per record royalty. They could not be required to put the public performance for profit price on the record nor charge for it, nor account for the proceeds. Similarly, the jobbers and distributors of sheet music likewise could not be controlled. It would be impossible to determine in advance the public performance for profit value of the various numbers.

The various composers and publishers have valuable copyright renewal rights which the Statutes impair. At the end of twenty-eight years from the original copyright the owner or his heirs, if he is dead, is revested with the copyright ownership regardless of assignment. The Florida Laws affect the operation of this provision of the Federal Copyright Law—among others. The witnesses valued this renewal right as high as one hundred and fifty thousand dollars.

Another important right the Statutes infringe, the witnesses testified, is the right of restricting the performance of songs. Mind you, in this new law is the requirement that the person making the affidavit under this new law must make the statement that he has the sole right to public per-

formance for profit of the piece of music concerning which the affidavit is made. It is impossible for these composers or publishers to truthfully make such an affidavit, or to guarantee the continuing of the piece of music for the reason that the music is subject to being restricted, and [fol. 808] the reason for the restriction is to keep it from being played to death in a few weeks. That is just one of the many issues. Irving Berlin stated that this right was among the most valuable rights he has, and Deems Taylor testified that restriction is even more important in the case of serious music than popular music.

The witnesses agreed that the present system of blanket licenses is desirable. Mr. Ahlert said, "It is the ideal status." The per piece system seemed to them to be impracticable. A point developed by Irving Berlin was that if a specific charge were made for his music, proportionate with the royalties for movie and stage rights received, it would cost the users far more than they are now paying, through ASCAP, for the public performance for profit or

"small" rights to his music.

In other words, Irving Berlin retains for himself the right to sell his music for movie and stage purposes, and if he received proportionate compensation acting as an individual with respect to his public performance for profit rights, the price it would cost—it would cost the users many, many times what they pay through ASCAP, because his music is simply worth that much and will demand that much money. The result is the users pay less under this plan of procedure and plan of marketing copyrighted music than they would otherwise.

The method of distribution among ASCAP members was also described. First, expenses of about 17½% are deducted, and the balance is allocated 50% to composer-members and the same to publisher-members. Each allocation [fol. 809] is then divided among its group according to classifications based upon length of service, artistic merit,

popularity and so forth.

A witness of another category was Herman Greenberg. He has been associated with ASCAP for twenty years and is now Assistant General Manager; his testimony went entirely to the set up of the Society. He further described the practice in prosecuting infringements of ASCAP music. This consists of sending out three notices, copies of which were put in evidence, followed by an investigation, then suit

and settlement of the suit upon granting of a license. He put in evidence a list of the number of licenses in the United States since 1922. He also stated the amount of revenue derived by ASCAP from Florida for the years 1935 to 1939, respectively, and also the expenses in Florida with the net

amount computed.

Now, that would give the Court some idea of the issues concerning which testimony has been introduced, and which we purport to establish in support of the bill of complaint. If the Court asks me my view of the case we are to try, it reduces itself to the simplest terms. I should say it is the fight and the purpose of the broadcasters and other various users of music to compel the composers—the owners of property to market that property on their own terms and to sell it on a plan that suits them, which plan would mean either a ridiculously inadequate compensation for that property, or result in the impossibility to collect anything for that property. In other words, the fight is to compel a per piece or per use system of sale.

[fol. 810] Judge Hutchinson: You are on one side and the broadcasters are on the other. They are claiming some rights compelling you to act. I think you will win the battle-but your statement of the issues! The State will reply it is motivated by a-sincerely trying to protect the poor people of the State of Florida. Now, it doesn't make any difference what group they are trying to protect, somebody has had the power to get the Legislature to pass this law. Of course, it would have been in fine shape if you told the Legislature what you are telling us. lature has said this must be done, and no matter how much I might sympathize with ASCAP, we would have to have pointed out to us some difficulty—some impediment to the power of the Legislature. I would be rather surprised if they could combat any of those things you have been telling me. I assume they could do a lot better with ASCAP than they could without it. But it doesn't

Mr. Wideman: It is unconstitutional.

strike me that that's the real issue.

Judge Hutchinson: That's a good word, but why? There is something I haven't got yet. Why would it be unconstitutional for a state to say, "I don't want the composers to combine; I don't want the manufacturers to combine"? Are you relying on the commerce laws or something like that? Would this thing be unconstitutional because it in-

terferes with commerce? Does the Constitution of the United States or Florida help you out? Just where?

Mr. Wideman: For one thing, your Honor, it impairs [fol. 811] obligations under contracts entered into—knocks them out—

Judge Hutchinson: You think it violates the clause against impairing of contracts?

Mr. Wideman: Yes, sir, your Honor.

Judge Hutchinson: What other?

Mr. Wideman: It deprives us of our rights under the Copyright Laws.

Judge Hutchinson: You think it interferes with the Fed-

eral Statute?

Mr. Wideman: Yes, your Honor, the said laws interferes

with the operation of the Federal Copyright Laws.

Judge Hutchinson: And those rights, you say, extend not only to the right to withhold the sale or use, but the right to determine how that sale and use shall be effected?

Mr. Wideman: Of course, your Honor, otherwise the

property would be valueless.

Judge Hutchinson: You are putting yourself on the ground that the Federal Copyright Laws have been violated. What other laws have been violated?

Mr. Wideman: I think, your Honor, I can give you just that information by reading one paragraph in the bill of complaint.

Judge Hutchinson: That's fine.

Mr. Wideman: (reading) "This further supplemental bill of complaint is brought among other things, to enjoin the enforcement of the New Law; to repress and prevent [fol. 812] the deprivation under color of the said New Law of certain rights, privileges and immunities secured to complainants by the Constitution and laws of the United States and the Constitution of the State of Florida, that is, the right to have and enjoy exclusive rights under certain copyrights granted and owned by the respective complainants, other than the Society, as well as the exclusive right to publicly perform for profit such copyrighted compositions which has been vested in the complainant Society for a limited period as hereinafter set forth, which rights have been respectively granted to the complainants pursuant to Article 1, Section 8 of the Constitution of the United States and the Copyright Act of 1909 as amended (35 Stat. L. 1075-1078, U. S. Code, Title 17); to repress and prevent the deprivation of such rights without due process of law and without the equal protection of the laws; and to repress and prevent—

Judge Hutchinson: Where do you say due process of

law comes in here?

-Mr. Wideman: Music. Not all of the people who own copyrights have music; there are copyrights on books.

Judge Hutchinson: You think the Statutes can't make

a classification of music as against books?

Mr. Wideman: That is my point, your Honor. Yes, sir.

Judge Hutchinson: All right.

Mr. Wideman: (continuing) " and to repress and prevent the impairment of obligations of contracts heretofore made by the—

[fol. 813] Judge Hutchinson: The impairment of the obligations of contracts necessarily does not arise in a constitutional sense where the act is within the police power of the State:

Mr. Wideman: I think that is true. We propose to demonstrate, before the case is over, that this is not a proper exercise of the police power of the State of Florida. (continuing) " and to repress and prevent the impairment of obligations of contracts heretofore made by the respective complainants and others similarly situated; to repress and prevent the operation and enforcement of said New Law; to repress and prevent a compulsory and irrevocable grant of special privileges to the users of complainants' copyrighted musical compositions in the State of Florida in violation and disregard of complainants' rights; to repress and prevent the taking of complainants' property without just compensation and for a private purpose; to repress and prevent the enforcement of said New Law as a special law granting to corporations, associations and individuals a special privilege and retroactive in its operations; and this further supplemental bill, among other things, involves the question as to whether or not each of the complainants may combine with one or more persons as defined in the Statute as a partnership, society, association or corporation (whether a resident or non-resident of the State of Florida), for the purpose of licensing the public performance for profit of their copyrighted musical compositions without the State of Florida; whether or not complainants in combination with one or more other per-[fol. 814] sons, have the right to issue by themselves or

through any agent, attorney or representative, the right to users in Florida to publicly perform for profit musical compositions copyrighted and owned by complainants on any basis other than prescribed in said New Law; whether or not complainants acting in combination or collectively have the right to issue to citizens of Florida licenses for the public performance for profit of their copyrighted musical compositions copyrighted and owned by complainants by means of blanket licenses and fixed fees for the public performance for profit of complainants' copyrighted musical compositions to users within the State of Florida without giving such user an option to pay royalties either on a per piece or program basis; whether the State of Florida has the right to require and compel complainants to file within the State of Florida a list of musical compositions written, composed, copyrighted or owned by the complainants; whether or not the State of Florida may deprive complainants of rights secured under the Copyright Laws of the United States to restrict certain uses of their copyrighted works where they have given a license for a limited use thereof; whether the State of Florida has the right to require or compel complainants to fix a price for their copyrighted musical compositions for the performing rights of each separate performance for profit of each composition belonging to the complainants and to compel complainants to make classifications determined by use and function or either of the users of such compositions with separate price for each classification; whether the [fol. 815] State of Florida may fix the terms upon which complainants may license the performance for profit of their respective compositions to users within said State; whether the State of Florida has the right to subject complainants and others similarly situated to the jurisdiction of the Courts of Florida and to require them to designate the Secretary of State as a person upon whom process may be served as their agent in the event that complainants or any of them shall attempt to license the public performance for profit of their respective copyrighted musical compositions or dramatico-musical compositions or to collect any compensation on account of any such sale, license or other disposition in the State of Florida; whether the State of Florida may prevent plaintiffs from engaging an attorney, agent, collector or representative in said State by enacting that any such attorney, agent, collector or repre-

sentative shall be subject to the penal provisions of said State Statute; whether the State of Florida has the right to impose a three per cent tax upon moneys collected by complainants for licenses to publicly perform for profit the copyrighted musical compositions and dramatico-musical compositions within the State of Florida; and whether said tax is discriminatory; whether said State Statute is sufficiently definite to apprise complainants of the acts for which they may be subjected to the penal provisions of said State Statute, including fine and imprisonment; and whether or not defendants in threatening to enforce the provisions of said New Law against complainants are not depriving [fol. 816] complainants of their property and their right to liberty without due process of law; and whether they are not denying the complainants the equal protection of the laws; and whether the State of Florida may impose conditions upon the enjoyment of copyright in the United States by the 44,000 members of foreign societies who have authorized the Society to grant licenses in the United States in their behalf, which conditions are not embraced in but are in conflict with existing treaties, Presidential proclamations and the Copyright Act of the United States."

Judge Hutchinson: Is all that in one paragraph?

Mr. Wideman: Your Honor, that is not all of that para-

graph. However, on that point-

Judge Hutchinson: It looks like there can't be any facts in dispute. The State can't interfere with copyrights—with the rights of persons holding copyrights within in the limits that the Courts have worked out on that.

Mr. Wideman: Isn't it a question of whether or not it should be shown in the testimony that the operation of these laws will deprive the plaintiffs of their rights under the

Constitution of the United States?

Judge Hutchinson: There isn't any doubt but that it will deprive plaintiffs of some rights. The State has police power which it may exercise without interference of either Federal or State Constitutions up to a point, and the question is where the law—it seems to me, there can't be very much fact in controversy, not from the standpoint of your [fol. 817] statement. I think it will be well to hear from the State—to hear what the issues of fact are. I am inclined to think that what the Legislature is doing is going to be a serious drawback; that isn't the solution of the question. Mr. Wideman: The question is whether or not it deprives

us of our property under the Constitution. We don't say we can't collect the full amount of money we could collect. We say our fundamental rights under the Constitution of

the United States are-

Judge Hutchinson: You say you have the right under the Constitution to proceed with your business substantially as you are doing. If you can maintain this Act will fall, but the solution that we must come to, as I see it, so far, isn't bound so much in the resolution of controverted facts, but in the resolution of controverted terms as to the limits within which the Legislature can work. The State may claim you can go on as before but I doubt that.

Mr. Wideman: They are going to claim we can, but we

think we have demonstrated we cannot.

Judge Hutchinson: Well, let's hear from the State.

Mr. Wideman: I think I see your Honor's point. We must in the presentation of this case deal with police power,

and before sitting down-

Judge Hutchinson: Of course, we will hear arguments on the case, but I would like for you to use as much of this time in expressly coming to a pre-trial set up on the facts. [fol. 818] Where do we differ on the facts? Is there a real conflict, and, then when we find where we are on the facts we have only a small conflict to resolve. That's why I would like to know now, why I would like to hear what the State has to say. Of course, we expect to be presented with written briefs.

Mr. Wideman: We have taken testimony pursuant to those ends, your Honor. Before sitting down, may I mention the brief your Honor spoke of a moment ago. The brief will be filed, but I would call your Honor's attention to the fact that there is already on file a brief in connection with the original bill of complaint that pretty well covers all of the issues, and there is something on that point of police power in that brief. However, we will supplement that brief with a further brief.

Judge Hutchinson: If you think the matter has been thoroughly briefed, all right. I haven't had access to this

brief.

Mr. Wideman: We will be glad to file another brief. May I also call attention to the fact that since the last hearing in this case in October in Jacksonville there have been handed down in other states by two and three judge Federal

Courts, decisions and decrees enjoining the operation of State Statutes that are substantially the same in form, content, and substance as the Florida Statutes.

Judge Hutchinson: On final hearing?

Mr. Wideman: Yes, sir. I have here a copy of the findings of fact and copies of the decrees in both of those cases. [fol. 819] In the Tennessee case the opinion was not written, but in the other a very thorough opinion was written by the Court—in the Nebraska case.

Judge Hutchinson: Who wrote that opinion?

Mr. Wideman: Judge A. K. Gardner. It is a well considered discussion of the issues involved in this proceedings.

Judge Hutchinson: Did they decide the question on the

Federal Constitution or the State?

Mr. Wideman: The Federal Constitution. The decree was entered on January 25, 1940, and the decree in the Tennessee case was rendered in Nashville, Tennessee, on February 19, 1940.

Judge Hutchinson: I suppose an appeal has been applied for?

Mr. Wideman: No, sir.

Judge Hutchinson: The time is out?

Mr. Wideman: They filed a motion for a new trial in Nebraska and the motion for a new trial was denied, so that the ninety days has not probably expired.

Judge Hutchinson: All right. Now, we will hear from the State.

Mr. Ellis: I am sure the Court recognizes the State, through the Attorney General, has no interest whatever in any private controversy that may be involved in this litigation. The State and the Attorney General are charged with the administration of the 1939 Act; the '37 Act has not been superseded. We are considerably interested, however, in sustaining the acts and policies of the Acts which we re-[fol. 820] gard as strictly in accordance with the laws of the State and the Nation against unlawful combinations in trade.

It seems, from Mr. Wideman's statement, we are in conflict as to the issues, and I really don't exactly agree as to what the issues of law are. In order to present our position we must disagree in regard to the contents of the Statutes. We must—

Judge Hutchinson: Give it to us without reading it.

Where is the real pinch in this case?

Mr. Ellis: The position of the State is that there are only two or three essential features in these two Acts. The first appears in Section 1 of the 1937 Act, and simply makes it unlawful for composers, authors, and publishers to combine to fix prices for the use of their original compositions.

Another object of the Statute is provided by the 1939 Act which says there shall be no combination of two or more persons to issue a blanket license for musical compositions. That is a license for a public performance of these compositions at a certain price unless there be an established per composition price, and shall be offered also at the option of the user. In other words, the acts do not prohibit the issuance of blanket licenses, they merely provide that there should be a blanket license and a per piece price established, and that should be filed by the owner of the composition with the Comptroller of the State of Florida, with the statement as to who owns the copyright, his residence, and [fol. 821] certain formal details of that kind.

Judge Hutchinson: You mean it does not prohibit the association of these persons, the organization of ASCAP to

also file this schedule of ownership and price?

Mr. Ellis: Yes, sir.

Judge Hutchinson: As I remember the argument in Jacksonville, the trouble there was they said they couldn't arrange individual licenses, not only because of the cost, but because there are a great many people in this organization; they just couldn't put a price on those things. Now, from your standpoint that is immaterial?

Mr. Ellis: Yes, sir.

Judge Hutchinson: All right, go ahead.

Mr. Ellis: And, second, that is not true. There is nothing in the Act which prevents an organization like ASCAP from functioning in a non-monopolistic manner—the using of musical compositions in a competitive manner.

Judge Hutchinson: The Act doesn't prohibit them from

granting licenses?

Mr. Ellis: No, sir, but it does prohibit them from combining together, both the composers and publishers, and the issuing of licenses for which they collect compensation derived from programs on which their compositions are not even used.

In other words, that arises out of this situation. ASCAP,

it will be shown in evidence, levies or collects a fee—a license fee, on which some broadcasting station, movie house, [fol. 822] night club, hotel pays based upon a percentage of the entire gross income of that place, and where there may be many a night when nothing control-ed by ASCAP is used. That income may come even from the sale of fruit, or a tap dance, or an amateur entertainer—on something which has no connection with ASCAP, something which ASCAP and its members have no copyright interest.

Judge Hutchinson: Does the Act prohibit these people

from licensing?

Mr. Ellis: It provides a schedule or a classification be established for different kinds of uses, or the volume of use according to trade conditions. It permits that so long as they are filed, and it may be changed on seven days' notice.

It forbids the exaction of compensation for the use of a copyrighted musical composition based upon the proceeds or revenue from a program in which that copyrighted composition is not used.

Judge Hutchinson: The Act doesn't merely provide for the filing of this schedule and the prices and individual use—the license, unless it took into account where none of those compositions were used.

Mr. Ellis: That is an important feature, and we can show your Honor decisions by the Supreme Court—

Judge Hutchison: That tells people how to fix prices for the articles they are selling?

Mr. Ellis: Your Honor, the holder of a copyright, like the holder of a patent, can charge anything he wants to [fol. 823] for the use of that patented article, or for the use of that copyrighted composition, but the Supreme Court has held several times that he cannot charge for the use of that article—he cannot make a charge based upon the revenue from something else in connection with that article which is not copyrighted and in which he has no copyright interest. That came up in a gasolene case some time ago.

Judge Hutchinson: They have here a copyrighted article which is subject to the regulations as to the manner in which the persons owning the copyright can charge? Is that it?

Mr. Ellis: Yes, sir. Basically our position is simply this. The effect of the Copyright Laws, the effect of the provisions of the Federal Constitution that only Congress can give, as Mr. Justice Roberts said recently, "The right of the property is an intangible species of property which the common law gave as tangible property." It gives that man an exclusive right to control that intangible species of property, but we contend that, nevertheless, he is subject to other laws of the commonwealth in regard to police power.

Judge Hutchinson: It is the combination you are relying upon? You are the head of a combination and it is in re-

straint of trade?

Mr. Ellis: We construe these acts—there is not a thing in there that imperils in any substantial degree the exclusive right of the individual copyright owner, which is the only right he has under the Federal laws.

[fol. 824] Judge Hutchinson: Well, they don't make them outside of the State. There is no question at all of. Inter-

state Commerce.

Mr. Ellis: No, sir; it regards the exaction of these prices in Florida—they don't have to come in here. They can come in individually and in a group so long as they don't combine together to fix prices.

Judge Hutchinson: They come into Florida and make this violation in the State—there is no question about being subject to Florida Laws; this would be a combination in vio-

lation of State Laws.

Mr. Ellis: We will submit all of this to the evidence, and also to the bill. Their bill establishes, without any evidence, such a combination. Their bill shows an association of some ten thousand members and a self-perpetuating board of directors with power to deal with the copyright protection of their members, and with the arbitrary power to determine how much their members should get.

Judge Hutchinson: Do you mean if it weren't for the fact of a copyright, there would be no question at all of a com-

bination?

Mr. Ellis: Yes, sir. The bill shows that they are barred by their own conduct.

Judge Hutchinson: What are the facts that you will have

to have two or three days to try?

Mr. Ellis: I don't think, your Honor, that there are any dispute of facts; we would be willing to stipulate. We have [fol. 825] some evidence these gentlemen have prepared to

show instances of discrimination, and it shows the number of copyrights controlled by ASCAP, and to show the extent of their activities; all of that appears in the bill.

Judge Hutchinson: These people do better by virtue of

the organization?

Mr. Ellis: Certainly.

Judge Hutchinson: They go further and say they really cannot do business under your system, but if they can't that is just their hard luck?

Mr. Ellis: Yes, your Honor, just like the Standard Oil

Company.

Judge Hutchinson: Do you go further and say they have this idea that police power takes their copyright protection away from them—you can do all you want by yourself and fix any price by yourself, but you can't combine with other persons who have similar copyrights and make a big trust or combination out of it? They say what they are doing is not a combination—that they are doing the only thing that can be done. That they can't use their copyrights unless they work it like this. I suppose your proof would be on the grounds that it is being done in different states and it could be done?

Mr. Ellis: We have evidence to show, that can be introduced in thirty minutes or less—to show that it is very simple and inexpensive; there might be an issue of fact there.

Judge Hutchinson: Let's get back to the facts. What [fol. 826] evidence do you propose to offer in rebuttal? You spoke of a stipulation. How far will you go on that? Mr. Ellis: We will stipulate to any fact which is clear.

Judge Hutchinson: How far?

Mr. Ellis: I have examined the details Mr. Wideman referred to. As I understand his statement—the first part was devoted to the earnings of the members of the Society. I don't think we can go so far as to say they have no revenue.

Judge Hutchinson: I am not sure in view of all this that I really understand what the issues are. It is our business to do it, and as they have stated it, it doesn't look like any issues of fact.

Mr. Wideman: Mr. Frohlich will examine our witnesses, which, I think, we can finish with today.

Judge Hutchinson: Have you undertaken to see if you can stipulate on anything?

Mr. Wideman: I see no possibility of stipulating as to the facts. Compliance with this law would run us out of business, confiscate our property.

Mr. Ellis: I don't know what they want to stipulate to.

Judge Hutchinson: I am trying to clarify it in my mind
so that my mind can start to working—what I have got to
decide. I can see lots of law contested here; that is as big
as a house, but what are the facts in this case?

Mr. Wideman: We intend to show, your Honor, as a [fol. 827] matter of practical operation it is a physical economic and financial impossibility to comply with the law,

because, thereby, we are deprived of our property.

Judge Hutchinson: Is that the line of your testimony?

Mr. Wideman: Partly so, your Honor. But while we are on the subject as to what the issues are, there is one thing that I do not think I have mentioned yet and that is our right not only to sell our property, but also our right to withhold our property from sale. Under this law the right of public performance for profit is confiscated—it will be taken by the people of the State of Florida unless this law—

Judge Hutchinson: That's a law question. What is the fact question here? The law says you must do it, and there is no dispute over the fact that you don't want to do it. The only question of fact there could be in it, that it is just an impractical thing, and you have already produced this through your depositions; it is an impractical thing and you could not really run your copyright under those terms. It would be largely opinion testimony.

Mr. Frohlich: No, your Honor; I want to prove the history of the Society, and the fact that it was met and opposed by a large, organized group of users for twenty-six years—it was met at every turn. I want to show that negotiations were had with these users, and that these users agreed to every fee. I want to show that we never arbitrarily fixed a fee on anybody. There has been a concerted attempt for a great many years, commencing in the halls of Congress, [fol. 828] to emasculate the law so that it would give no relief to these people. That attempt was not successful. There has been—

Judge Hutchinson: Does anybody deny all of that now? Does anybody deny that all of that has been going on?

Mr. Frohlich: Mr. Mills has been in this dispute, your Honor, for twenty years. I want to prove, furthermore, that when the attempt failed to amend the Copyright Law

these groups of users led by the broadcasters commerced in 1937 to initiate legislation in the states and they were successful in five of the states. I want to show that this represents the deliberate efforts on the part of a gigantic industry to crush the song writers.

Judge Hutchinson: We can't do anything about that. We can't inquire into the motives of the Legislature. We can't consider the motive which induced the passage of this

law.

Mr. Frohlich: Here is what I have in mind. There is an issue here of public policy and public interest and police power, because if this Act does take away rights granted by the Copyright Laws, has the State under its police power the right to do this? Then, your Honor is to determine is there an evil in the State of Florida—

Judge Hutchinson: If we can say there is evidence—there are conditions which the Legislature could legitimately have considered, it doesn't make any difference whether somebody went down there and bought them out lock, stock

and barrel; we couldn't do anything about it.

[fol. 829] Mr. Frohlich: But then, your Honor, would have

to determine as a question of law.

Judge Hutchinson: I have no objection to hearing you for a while on that—those political activities; there is a lobby in every legislature, and if this was considered in every act, why, we would never do any business.

Mr. Frohlich: I want to give you a general picture.

Judge Hutchinson: Well, I know that somebody is after you, and I know it is somebody who expects to make money out of you. (laughter)

Mr. Frohlich: That's what I want to prove.

Judge Hutchinson: We understand what the issues, sup-

pose you go ahead.

Mr. Boggs: Before commencing the testimony, your Honor, may I say that I am not so sure that the Court understands fully the difference between the 1937 Statute and the 1939 Statute. The '37 Statute prohibits any price fixing combination. The—

Judge Hutchinson: Is it necessary for us to pass upon

the '37 Law?

Mr. Boggs: No, I am not suggesting that. The Court has already decided against the 1937 Act, but I do say that the '37 Act is still in existence and this is a supplement to it. The monopoly provisions of the 1937 Act are still in

effect, but Sections 2A and 2B and 6 of the 1937 Act are out. Those are the sections on which, by the way, a great deal of evidence was taken in New York. That's why I am call-[fol. 830] ing your Honor's attention to it. There are sections which require the impressing of a price on a piece of music. We have conceded freely that those sections were barred by leaving them out. If your Honor will bear that in mind—if the plaintiffs want to offer further testimony on the supposed deleterious effects of Sections 2A, 2B, and 6, you will, no doubt, find it unnecessary because we have already consented to being enjoined on those sections.

Judge Hutchinson: What issues of fact do you think

testimony should be taken on?

Mr. Boggs: Issues of facts as to monopoly. There is enough in the pleadings in this case to show that they are a price fixing combination in restraint of trade, and we shall have some testimony to offer to show how large and

substantial a hold they have upon the industry.

If I had composed one piece of music and if Mr. Ellis had composed one piece of music, and if we put our heads together and made a price fixing combination, the Court wouldn't think that that was a very important combination, but we will show that that is an important and powerful combination; we will show that compliance with the 1939 Statute is very easily done by anyone willing to do so. So far as the monopoly issue is concerned, they have never agreed that they were a monopoly.

Judge Hutchinson: As concerns the broadcasting of copy-

righted music?

Mr. Boggs: They have never indicated that, but we shall [fol. 831] have some evidence on that score.

The only other thing I want to call your Honor's attention to now is in reference to the decrees of the Tennessee and Nebraska Cases. A copy of the Tennessee decree shows on its face that it was entered by consent of the Attorney General of Tennessee, so I don't think that is any precedent for anything. I will welcome your examination of the Nebraska decree. Mr. Wideman thinks it is a good opinion for him, but I am sure it is a good opinion for us. The State of Nebraska did have the power to regulate; ASCAP was a price fixing combination, but the Nebraska Act did not hold because of sections similar to our Sections 2A and 2B of the 1937 Act.

Mr. Wideman: Your Honor, we can't blame counsel for wanting to get rid of Sections 2A and 2B, but it has not been demonstrated that that has been repealed. We submit it has not been repealed; it doesn't say Sections 2A and 2B are not kept in effect. It is not limiting what we say to those Statutes. If it is the law in Florida, we are entitled for it to stay in order to show to what lengths the State of Florida would go in trying to enact legislation against complainants.

There was a second repealing law, if the Court will recall, that failed to pass.

Judge Hutchinson: All right, now suppose you go ahead with your testimony.

[fol. 832] Thereupon, to maintain the issues on their behalf, the Complainants produced as a witness one Edwin Claude Mills, who, being first duly sworn, testified as follows:

Direct examination.

By Mr. Frohlich:

- Q. State your full name?
- A. Edwin Claude Mills.
- Q. Where do you reside?
- A. In New York City.
- Q. How many years have you resided in New York?
- A. Twenty-two years.
- Q. Prior to your coming to New York had you been engaged in any business connection with the theatrical or entertainment professions?
- A. Yes, sir, since 1911; I have been in the theatrical business, the movie business, vaudeville theatres, and various other amusement enterprises.
- Q. Did you have any connection with the motion picture theatre business at any time?
 - A. Yes, from 1913 until 1918. Q. What types of theatres?

2000

- A. What types? Motion pictures, vaudeville, legitimate—dramatic; all sorts.
 - Q. And in what parts of the United States?

A. In the southwest generally; Texas, Oklahoma, Arkansas, Kansas and Missouri.

[fol. 833] Q. When you came to New York did you have any experience with the theatrical industry?

A. Yes, when I came to New York I became secretary of

the Vaudeville Managers' Protective Association.

Q. How long did you serve in that capacity?

A. Until some time in 1919.

Q. Is that vaudeville industry still flourishing?

A. No.

Q. Did the time come when you severed your connection with the industry?

A. Yes, sir.

Q. Then, what did you do?

A. I became Chairman of the Board of the American Society of Composers, Authors and Publishers.

Q. in what year was that?

A. 1919.

Q. What did you do after that?

A. Well, I continued in that office until 1929. Q. And what was your occupation after 1929?

A. Well, during the time I was the Chairman of the Board of the American Society of Composers, Authors and Publishers. In 1929 I left and became President of the Radio Music Company.

Q. Then, did you give up your occupation with that com-

pany ?

A. Yes, I left there in March, 1932, and became associated

with ASCAP.

[fol. 834] Q. In your business experience and connection with ASCAP did you have occasion to personally conduct negotiations with the motion picture theatres with reference to license fees?

A. Repeatedly.

Q. At the time that you first joined up with ASCAP were motion picture theatres in the United States using music to any great extent?

A. All of them.

Q. It was not on the screen in the theatres-

A. (interrupting) No, sir, it was performed by pianists, organists—it was living music played by live musicians.

Q. And the time did come when you participated in the negotiations for license fees?

A. Yes, sir.

Q. Can you tell us the approximate time when you first entered upon these negotiations?

A. I would say early in 1920.

Q. With whom did you negotiate?

A. With the Motion Picture Exhibitors League, with the Motion Picture Theatre Owners of America, and with various other state associations.

Q. Was that Motion Picture Exhibitors League a national

organization?

A. Yes, sir.

Q. Its members were the individuals who owned and operated motion pictures throughout the United States?

[fol. 835] A. Yes, sir.

Q. In these negotiations with these organizations did you particularly come in contact with any individuals—

A. (interrupting) Yes, sir, with Sidney Cohen, who is now dead; he was president of the organization at that time. Also with Walter Vincent their Executive—

Q. (interrupting) Did you on behalf of ASCAP finally consummate an agreement or a basis of operation on a fee—a license fee basis?

A. Yes, sir.

Q. Can you tell us generally what were the terms of

these agreements?

A. Well, there have been so many, but I will state to the best of my recollection. I think the first agreement we succeeded in negotiating was one under which a motion picture theatre in a smaller community would pay a license fee at the rate of two and a half cents per seat per annum. That is to say, a theatre with a thousand seats would pay twenty-five dollars a year for a per annum license to use that music, if an-when it wanted the music of ASCAP. The theatre in the larger city—the larger theatre was to pay five cents per seat per annum, and a theatre in the metropolis, the large house, was to pay ten cents per seat per annum for the same sort of blanket license.

Q. Were those negotiations and terms you just described approved by the Board of Directors of the Society?

A. Yes, sir.

[fol. 836] Q. Did the American Society license these theatres only on the basis you have just described?

A. Well, it is not so simple. No. There has always been some exhibitors that felt that their organization had nego-

tiated at a rate that was too high, and they repudiated, as individuals, these rates and sought to make individual deals; it was many years after that and we haven't been successful in licensing all of the theatres. There are some twenty thousand theatres located in every city and village throughout the United States, and they can't all be reached by our staff effectively, that is to say, each and every one of them.

Q. The contracts that are made on behalf of ASCAP, are

they made within groups of motion picture owners?

A. The contracts are never made with the groups that represent these users. We made contracts with the individual user of music based usually on the trade association negotiations which have been conducted in his behalf, and upon the association's recommendation that these terms should be acceptable.

Q. What is the present basis of the licensing fee between

the members of the Society and the theatres?

A. The minimum rate is now five cents per seat per annum, and the maximum rate is twenty cents per seat per annum; that would be the case in a theatre like Music Hall in New York City which is a house that seats six thousand people. Fees relate generally to the policy of the house, its size, its capacity, the number of shows it does per week, and its profit opportunities. The rate is very much lower [fol. 837] for a little theatre over on Third Avenue than it is for a big theatre which makes a much greater use of our music.

Q. After 1921 or 1922, did the radio industry come into the field?

A. Well, radio, as entertainment, began to develope in 1919, with the boys in the hay lofts and the barns who built receiving sets out of Ten Cents Store stuff, and from this a few broadcasting stations began to develope very rapidly up to 1922 when there were thousands of sets out and receiving sets had been vastly improved with the coming of loud speakers.

Q. Did the American Society license any operators of radio broadcasting stations from time to time from 1919 to 1922 or '23?

A. As radio grew in popularity, we began to be concerned at the commercial turn it was taking, and by the fact that music constituted almost the entire content of the programs, and it became obvious to us that radio was a strictly

commercial operation, and its use of music made what we thought was the condition established by the lowering of public performances for the purpose of profit. That hadn't been the case in the early days when there hadn't been enough, in our opinion. In the early days there had not been any profit motive, apparently, but with the development of radio, those that controlled the radio patents realized that if they were going to profit under those patents. they would have to improve radio sets, produce them in large quantities, and find a market for them, and there [fol. 838] wasn't going to be a market for radio receiving sets unless there was entertainment broadcasts of sufficient quality to create a demand for these sets. If people invested their money in receiving sets obviously broadcasting systems had to maintain those sets. It became a proposition of broadcasting existing in the entertainment sense, to the end that more people would buy the sets in order to get the entertainment; all of this was before there was any advertising by radio.

Q. Did you make any attempt on behalf of ASCAP to collect any fees from the radio industry prior to 1922?

A. No.

Q. Did you issue any special licenses to any broad-casters?

A. Yes.

Q. How many?

A. Twenty-five or thirty around and over the country.

Q. Were these upon a basis of no payments?

A. Yes, entirely free of charge. Special licenses were issued to operators who weren't certain about the law and who had been advised by their various counsels there might be a liability. We participated in the development of radio.

Q. What were your first contacts with the industry as a group?

A. My recollection is that in the fall of 1922, we discussed this matter. We discussed this matter at a meeting of the Board of Directors of the Society. Radio had grown to such proportions we thought it was time to do something about it—to find out whether there was a public performance for—

[fol. 839] Judge Hutchinson. We have no objection to all of this, but can't he bring it down to the present?

Witness: I will answer more briefly, your Honor.

Judge Hutchinson: I understand that you have lived all

through this, and that you want to tell it all.

Witness: (continuing) In the fall of 1922, we summoned into conference the representatives of the various broadcasters and broadcasting interests in the United States, and the United States Government, Department of Commerce, to discuss some of the questions involved—whether radio was in the category of places that used music for public performance for profit, and whether broadcasters should take licenses from ASCAP if they wanted our music.

A. As a result of those discussions were licenses negotiated between ASCAP and the radio broadcasters?

A. No-

Q. (interrupting) When were the first licenses issued, if

you know?

A. (continuing)—they took the position in those conferences that broadcasting was not a public performance for profit, and they refused to take licenses. A suit was brought against Station WOR, a few months after that, in New Jersey alleging infringement by broadcasters. Is that brief enough?

Q. I want you to tell the Court-

A. (interrupting) That suit was tried and a decision rendered that was favorable to the copyright owners. There[fol. 840] after, the defendants declined to appeal, and said that was as far as they wanted to go, and Station WOR took a license from ASCAP. The next step was the General Electric Company—

Judge Hutchinson: That doesn't make any difference. So you had a lot of suits.

Witness: Yes, sir. After a number of these suits broadcasters generally all over the country took licenses.

- Q. For how long a period were your license contracts with these broadcasters?
 - A. Usually one year.
 - Q. Did the time come when you extended that period?
 - A. Yes, sir.
 - Q. When?
 - A. In 1932.
 - Q. Was that the result of general negotiations?

A. Yes, indeed; long continued negotiations.

Q. And for how long a period did that license extend?

A. For three years.

Q. Upon the expiration of the three years, were further negotiations had?

A. Yes, sir.

Q. With the same purpose?

A. Yes, sir. We extended the then existing licenses under the same terms for an additional three years.

Q. Three years?
[fol. 841] A. No. five years.

Q. For five years?

A. Yes, five years; that would bring it up to 1940.

Q. Does the present license agreement with the broad-casters expire in 1940?

A. Yes, sir.

Q. How many broadcasting stations are there in the country?

A. In round figures seven hundred.

Q. How many of them belong to the National Association of Broadcasters?

A. I can't say; they either own, control, or have management contracts for the operation of about eighteen stations.

Q. Are you speaking of the National Association of Broadcasters?

A. No, the National Broadcasting System.

Q. How many broadcasters are members of the National Association of Broadcasters?

A. Oh, I misunderstood your question. I don't know. It is reported about three hundred and seventy.

Q. Did the Federal Trade Commission get in touch with ASCAP?

A. Yes, sir.

Q. They wanted to know something about that situation?

A. Not about—

Judge Hutchinson: If that comes under some law. Mr. Frohlich: It does not, your Honor.

Q. Was there an investigation made by the Federal Trade Association?

[fol. 842] A. Yes, upon complaint of the Motion Pictures Exhibitors League.

Q. What year was that?

A. 1920.

Q. As a result of that investigation did Mr. Sidney Cohen,

President of the Motion Picture Theatre Owners of America, receive a communication from the Federal Trade Commission?

A. Yes, sir.

Q. Have you seen it?

A. We received a copy of it from the Federal Trade Com-

Q. I will show you this copy in this here (indicating book), dated January 2, 1930. (handing book to witness). Is that the copy you saw?

A. Yes, sir.

Mr. Frohlich: I would like to offer that in evidence as part of the hearings before Congress. May I read it, your Honor?

Judge Hutchinson: There is no use to encumber the record. Let the reporter copy it in the record. (Thereupon, the said letter was copied into the record and made a part hereof as follows:)

"January 2, 1923.

"Mr. Sidney S. Cohen, President Motion-Picture Theatre Owners of America, New York City.

"Dear Mr. Cohen:

"Your letter on the 14th instant addressed to the secretary of the commission, making application on behalf of [fol. 843] the Motion-Picture Theatre Owners of America against the American Society of Composers, Authors, and Publishers on account of alleged violation of the law against unfair methods of competition by the imposition of a tax or royalty on motion-picture theatres for the right to play the copyrighted music of its members, has been considered.

"We have carefully considered the facts, as stated by you, and examined the decision of the courts applicable thereto, with the result that it has been concluded that the case is not one calling for the exercise of the commission's corrective powers. The chief reason for this conclusion may be stated as the fact that the making of a claim for royalties, apparently in good faith, cannot be said to constitute "an unfair method of competition in commerce"; it cannot be said to be unfair in the sense in which the word is used in the commission's organic act, but is merely an assertion of a supposed legal right which is fully determined

by the Courts; and it is not a "method of compe-tion", because the parties in controversy are not in any way competing with each other.

"It is regretted that we are unable to aid you in this

instance.

[fcl. 844] "Very Truly yours, Federal Trade Commission, Millard F. Hudson, Chief Examiner".

(Whereupon, a recess was taken until 2 o'clock P. M., on the same day.)

(After recess-2 o'clock P. M.)

Judge Hutchinson: Proceed.

Mr. Frohlich: Before proceeding with Mr. Mills, your Honor, I have the copy of Judge Gardner's Decision.

Judge Hutchinson: All right.

(Thereupon, the witness, Edwin Claude Mills, took the stand, and Mr. Frohlich resumed the direct examination of said witness.)

Direct examination (continued)

By Mr. Frohlich:

Q. Mr. Mills, in all of these negotiations that extended from 1922 to 1935 with the broadcasters, were you met on each occasion by the National Association of Broadcasters?

A. By a negotiating committee representing that organ-

ization.

- Q. Did that committee also employ counsel from time to time?
 - A. Yes, sir.
- Q. You sat in a conference with committee and counsel on these occasions?

A. Repeatedly.

[fol. 845] Q. Now, with reference to the hotels, do you know how you negotiated your license fees with the hotels?

A. Yes, with a committee representing the American Hotel Association.

- Q. When did those negotiations commence for the first
 - A. I would say in 1920.
 - Q. Have you, on behalf of the Society, from time to time,

over the years, had other negotiations with the American Hotel Men's Association?

A. Yes, almost every year.

Q. Something was said this morning, Mr. Mills, about ASCAP obtaining a percentage of the business done by these various users, will you state whether or not ASCAP collects, exacts, or obtains a percentage on any of the business done by the hotels in this country?

A. No. sir.

Q. Does any restaurant?

A. No, sir.

Q. Cabaret?

A. No, sir, no other class of establishment other than broadcasters.

Q. In other words, the percentage system is exclusively confined to the broadcasting industry?

A. Yes, sir.

Q. What is the percentage which is today paid by the broadcasting systems?

[fol. 846] A. 5% after certain deductions; it is not 5% on the gross income.

Q. After the deductions, is there an additional charge made in addition to this percentage?

A. There is a fixed sustaining fee—a fixed sustaining fee for commercials as differentiated from non-sponsored programs.

Q. Have you a famil-arity with the radio broadcasting industry?

A. Yes, sir.

Q. Do you know how it operates?

A. In a general way.

Q. Can you tell us whether the broadcasters in addition to paying the Society 5% pay any other charges for time on the air?

A. To ASCAP!

Q. No, to anybody?

A. They pay plant charges, talent, salaries; they pay all charges normally incident to the—

Q. (interrupting) Do they pay an agency?

A. Yes.

Q. What does that amount to?

A. 15%; sometimes it is as high as 30%.

Q. Is that paid by each and every broadcaster that advertises?

A. Yes, sir.

Q. In other words, they pay three times as much to the agency as they do to the Society?

A Yes, sir, and sometimes more.

Q. Do you know how many broadcasting stations there [fol. 847] are in the State of Florida? Approximately?

A. I don't; twenty or twenty-two, something like that.

Q. Are these stations now licensed by the American Society?

A. I think so.

Q. And have they been licensed for years?

A. I think so.

- Q. Commencing with the year 1924, hasn't there been, to your knowledge, bills introduced in Congress, from time to time, which effect and have effected the Copyright Act of 1909?
 - A. A great many of them. Yes, sir.

Mr. Ellis: I don't want to object to this, may it please the Court. I am trying to be lenient, but I can't see what that has to do with this case—we are getting into an elaborate political discussion.

Judge Hutchinson: Counsel regards that general fact—that bills have been introduced, as important. Of course, somebody might differ with him. Just get that general fact in. I would rather let it go in.

Mr. Frohlich: I was just going to make an inquiry on a few of these bills that have been introduced, because, I think, it will be helpful to this Court. I know that the Court is going to consider the question of the evil and police power.

Judge Hutchinson: Well, we are not really going to be concerned with how many bills have been introduced.

Mr. Frohlich: Your Honor, the claim has been made [fol. 848] that the justification for the Statutes are that they are in the public interest of the citizens of the State of Florida, and I propose to show that they are in the private interest of a small group of users in the State of Florida.

Judge Hutchinson: I don't think that is admissible in an inquiry of this kind.

Mr. Ellis: I object to the evidence upon counsel's state-

ment as to what the purpose of it is.

Judge Hutchinson: Its purpose unseats it as evidence. We have got many truck laws in Texas which have the idea that it was good for the people, but everybody knew that it was the railroads that got the laws passed. It was within the power of the State of Texas to choose between those two carriers.

Mr. Frohlich: Here is a case where the radio industry has appealed to Congress to change the law, and Congress would have the right to modify and change the Copyright

Law, but it hasn't done it.

Judge Hutchinson: That certainly doesn't effect the State. It seems to me, this testimony is primarily for the purpose of showing that this bill hasn't the support of the police power because it is not in the public interest, but in the interest of a particular group. I will sustain the objection. I thought you were going to show it for the purpose of the color you were trying to give the [fol. 849] case.

Mr. Frohlich: In order to protect my record, may I make a formal offer of proof—of the documents setting forth the various bills, and as, your Honor, has ruled, may

I have an exception.

Judge Hutchinson: Yes, of course.

Mr. Frohlich: Mark this for identification.

Judge Hutchinson: Subject to the objection, and if we find it material later on, we can use it.

(Complainants' Exhibit No. 1 for Identification.)

- Q. Now, Mr. Mills, in these negotiations you had with the broadcasters, from time to time, was there anything said by the gentlemen representing the broadcasters about the blanket license under which you were licensing these stations?
- A. Yes, it was repeatedly referred to in various different formulae for licensing the users of copyrighted music—many were suggested.
- Q. To help the Court, explain what you mean by a blanket license?
- A. A blanket license which grants to the licensee the right to use at will any and all selections—copyrighted musical selections of ASCAP, any and all of them.

Q. Does it make the reservoir of the compositions owned by the Society available to these users?

A. Yes, as to non-dramatic public performance.

Q. That is known as the "small" rights as distinguished [fol. 850] from the stage rights?

A. Yes, as distinguished from the dramatic composition.

Q. Did the broadcasters ever tell you that they wanted some other system of licensing?

A. Yes, sir.

Q. What did they tell you and when?

A. Well, from time to time, I can't identify the particular times without consulting the records, they have suggested all sorts of licenses. The negotiating committees have suggested that they would like to have what they call—well, they have generally discussed three kinds of formulae, none of which I understand. The per use system of licensing, a per piece system of licensing, a per program system of licensing—a measuring system of licensing.

Q. Did you ever ask them to explain to you in detail what any of those four systems were?

A. Yes, sir.

Q. Were you ever able to obtain that information from them?

A. I asked them to cooperate and to submit the sort of a formula they would like to have—in precise and exact detail, so that we might study it and see if, in our opinion, it was practicable. I have asked for that repeatedly from every negotiating committee and from the executives of the National Association of Broadcasters, and from their counsel, orally and in writing, and to date they have never submitted the detail of the plan which would have included these four different descriptions.

[fol. 851] Q. Now, these broadcasting stations throughout the country run for how many hours a day?

A. A full time station is on sixteen or more hours per day.

Q. How many programs would you say a full time station plays in a day?

A. It is difficult to compute an average of programs. A station that concentrated on fifteen minute programs would have approximately four times as many programs in a day as a station that concentrated on one hour programs.

Q. Do these broadcasters make use of music to a great extent on these programs?

A. Yes, sir.

Q. Can you state from your experience what the per-

centage is? Approximately?

A. Well, there is some disagreement about that. I would say not less than 60% and not more than 80% of the content of the programs.

Q. How many musical compositions a day would they

play?

A. An average station not less than two hundred and fifty, and some of them five or six hundred different titles.

Q. Some of them play as many as five and six hundred?

A. Yes, sir.

Q. And two hundred and fifty-

A. (interrupting) Two hundred and fifty would be a minimum for a full time station.

Q. Under the blanket license system of the Society, are [fol. 852] these stations able to play any composition in the repertoire of the Society without making any inquiry?

A. Yes, except as to composer restricted songs.

Q. Tell us about that?

A. The individual owner of the copyright notifies the Society, under his agreement with the Society, of his desire to restrict the number of performances of that particular number. His reason for doing that is based upon the desire of the composer that the composition be not broadcast to its destruction-be not reprititiously broadcast during the peak hours of radio popularity. Second, if the composition is a number in a current motion picture or stage production, he restricts it because if it is widely broadcast interest in that particular show will have depreciated; people will have heard the music and to that effect their desire to buy tickets will be diminished. For these two reasons and also if there is some dispute about the ownership of the copyright, as is commonly the case not commonly, but frequently the case, the one who owns the copyright may restrict it because of these infringement suits.

Q. Are there frequently infringement suits brought by third parties against the members of the Society?

A. I wouldn't say frequently-

Q. (interrupting) Who defends those suits?

A. The American Society of Composers, Authors and

Publishers under our license agreement with the broadcaster. Under our license agreement we agree to serve [fol. 853] him harmless against any damage suits.

Q. Is that the practice of the Society with respect to

all users throughout the country?

A. Yes, sir, we have defended many such suits.

Q. Approximately how many users would you say the Society has?

A. How many? Twenty-four or twenty-five thousand

licensees.

,2

Q. To your knowledge, has any licensee of the Society in the past twenty-six years ever paid one dollar in the way of damage by the way of infringement claims?

A. Not if the composition was represented as being a

part of ASCAP's repertoire.

Q. You say there are about two hundred and fifty musical compositions played per day on a full time station?

A. That is a minimum.

Q. If the broadcaster didn't have the service of ASCAP, what would he have to do to clear his copyrights in order

to avoid infringement suits?

A. He would have to ascertain first what composition he wanted to play, then, he would have to ascertain the copyright ownership of the composition, and then he would have to contact the owner and secure his license.

Q. Would that have to be done a reasonable time-in

advance of the program?

A. It depends—the answer is, yes.

Q. Are there often disputes as to the ownership of copyrights—

A. (interrupting) Very frequently.

[fol. 854] Q. (continuing) —belonging to the members of the Society?

A. Yes, sir.

Q. The Society also has contracts with various foreign societies, hasn't it?

A. Some twenty-one of them.

Q. Are these similar in function to the American Society?

A. Organized for exactly the same purpose.

Q. What is the oldest Society?

A. The French Society.

Q. When was that founded?

A. Ninety years ago.

- Q. Is there a society like this in England?
- A. Yes, sir.
- Q. Italy?
- A. Yes, sir.
- Q. Germany?
- A. Yes, sir.
- Q. Austria?
- A. Yes, sir, in all civilized countries, and some not so civilized.
- Q. And this Society has contractual relations with all of these societies?
 - A. We represent each of them.
- Q. In addition to the works of the members of the Society, does the Society furnish to its users the right to publicly perform for profit the works of the forty-four [fol. 855] thousand members of the of the European Societies?
 - A. Fifty-six thousand. Yes, sir.
- Q. Does the American Society remit these license fees to the European Societies?
 - A. Yes, sir.
- Q. Does the European Societies remit to the American Society?
 - A. Yes, sir.
 - Q. Are these monies all put into a common pot?
- A. Foreign royalties are distributed to our members in exact proportion.
- Q. How are the revenues of the American Society divided among the members of the Society?
- A. From the entire revenue after the cost of operation is deducted.
 - Q. What is that operating cost?
 - A. Between seventeen and twenty percent.
 - Q. Then, what happens?
- A. The amount left, after the deduction of operating costs, is distributed among the members every three months.
 - Q. And on what basis is that made?
- A. It is divided into two equal funds, one of those is placed at the disposal of the publishers' classification committee, and the other is placed at the disposal of the writers' classification committee. The members of these committees are selected by the members of the Society, and each of these groups classifies its own members upon the basis of profits and the popularity of their respective works,

[fol. 856] the number of performances of which we have records and so forth and so forth, so that their respective participation in dividend and royalty distribution is fixed by the Classification Committees.

Q. Does the Society maintain a reserve fund?

A. Yes, sir.

Q. Is it very large?

A. That, of course, is a matter of opinion.

Q. How much is that now?

A. I don't know.

Q. Does the Society maintain a relief fund?

A. Yes, sir.

Q. What is that money used for?

A. For the relief and aid of members in distress, and even non-members in distress—composers and authors. It is not for the relief of publishers.

Q. How far in advance are radio programs made up,

if you know?

- A. Well, any length of time in advance. I mean by that a station might be planning a program for Christmas right now, but that is an exception. Generally, seventy-two hours in advance.
 - Q. And are there frequently last minute substitutions? A. Yes, very frequently.

Q. Due to the illness of the artists?

A. There are any number of causes.

Q. If the radio had to contact individual copyright owners, could they operate their business today upon its present basis?

[fol. 857] A. As an opinion, no.

Q. Is there a definiteness and certainly as to the ownership of the public performance for profit rights in copyrighted musical compositions as between the writers and publishers themselves?

A. There is a joint ownership. The publisher does not own the composition exclusively as to the performing rights in it, and if the writer of the composition is a member of

ASCAP and vice versa.

Q. That joint ownership, of course-

A. (Interrupting) Cannot be exercised by one without the permission of the other.

Q. Since the rights and the writer and publisher belong

Mr. Ellis: We object to this line of questioning, your Honors. The witness is being made to answer purely legal questions here. The contracts will speak for themselves.

Judge Hutchinson: I suppose we will let this go in, with the idea that counsel will soon finish up; it doesn't seem very material. The virtues of the Society doesn't seem to me to have any bearing on this case.

Judge Long: What is your view point?

Mr. Frohlich: Thank you, your Honor. Our view point is to show that the operation of this Society is of benefit to the users of music in the State of Florida, as well as to the citizens of the State of Florida. There has never been any [fol. 858] harm or injury done to anybody by it in the State of Florida.

Judge Hutchinson: That's what I mean by its virtues;

that would be for the Legislature to say.

Mr. Frohlich: There is always, involved in my head, the evil and police power—it would make legal a Statute which infringes upon copyrights.

Judge Hutchinson: I am not sure I see it. Objection

overruled.

Q. Now, these broadcasting stations are divided into groups of some kind, are they, Mr. Mills?

A. Yes, sir.

Q. Well, now, is there such a thing as general broadcasting stations or a system?

A. Yes.

Q. How many of those are there?
A. Fourteen or sixteen of them.

Q. Now, what are the general networks?

A. May I correct myself? I used the name general synonymously with the word network. The chief networks are those operated by the Columbia Broadcasting System, the National Broadcasting Corporation, and the Mutual Broadcasting Company.

Q. What are the affiliated stations?

A. Stations affilated with a network which regularly takes

the network's programs.

Q. Just how do these networks operate throughout the country?

[fol. 859] A. The program originates in a key station to which the other stations throughout the country are connected by telephone, and they simultaneously broadcast the same program.

Q. A program that originates in one station?

A. Yes.

Q. And this program is simultaneously broadcast throughout the country?

A. Yes, sir.

Q. Are there any broadcasters in the State of Florida who are members of and affiliated with the National Broadcasting Corporation and Columbia Broadcasting System?

A. Yes, sir.

Q. Do you know, off hand, the names of any of these stations?

A. At the moment, I can't name any.

Judge Hutchinson: We take that for granted. Nobody disputes that.

Mr. Frohlich: I think it is in the-

Witness: Station WYAX in Jacksonville, Florida, is affiliated with one of the networks.

Judge Hutchinson: There is no use going into that.

Q. Mr. Mills, when the composition of a member of the Society is broadcast on one of those affiliated networks to which a radio broadcaster of the State of Florida is hooked up, does that program come into the State of Florida although it originates in another state?

A. Yes, it is broadcast in the State of Florida simul-[fol. 860] taneously with the station that originates the program.

Q. Have you in the past few years heard any of the compositions of the members of the Society performed on network programs?

A. Yes, sir.

Q. On programs hooked up with Florida broadcasters?

A. Yes, sir.

Q. To your knowledge, has music of the members of the Society been broadcast in that manner into the State of Florida?

A. Yes, sir.

Q. Do the members of the Society from time to time, publisher-members, sell their musical composition in sheet music o form in the State of Florida?

A. Yes, sir.

Q. Have you been frequently in the State of Florida?

A. Yes, sir.

- Q. Have you seen on sale or purchased any composition of the members of the Society in that State?
 - A. No, sir.
 - Q. Have you seen them on sale anywheres?
 - A. Not to my recollection.

Judge Hutchinson: I suppose the State will admit that some of them are published here.

Mr. Frohlich: There is no sales dispute about that.

Judge Hutchinson: I don't think counsel is disputing anything that you are putting on.

- Q. Now, Mr. Mills, your attention is directed to the [fol. 861] Statute of the State of Florida, Chapter 19653 of the Laws of 1939, sub-division 2, which provides: (reading) "It shall be unlawful for any person to sell, license the use of, or in any manner whatsoever dispose of, in this state, the performing rights in or to any musical composition or dramatico-musical composition which has been copyrighted, and is the subject of a valid existing copyright, under the laws of the United States, or to collect any compensation on account of any such sale, license, or other disposition, unless such person:
- "(a) Shall first have filed with the Comptroller on forms prescribed by the Comptroller a list describing each such musical composition and dramatico-musical composition, the performing rights in which said person intends to sell, license or otherwise dispose of in this state, which description shall include the following: The name and title of the copyrighted composition, the date of the copyright, the number or other identifying symbol given thereto in the United States copyright office, the name of the author, the name of the publisher, the name of the present owner of the copyright to said composition, and the name of the present owner of the performing rights thereto."

There is also provided in Section B, Mr. Mills, that an affidavit should be filed with such lists, and which must be submitted to the Comptroller of the State of Florida. Now, Mr. Mills, have you had any experience in drawing up lists of musical compositions in this country?

[fol. 862] A. Yes, sir, a great amount of it.

Q. When did you for the first time have something to do with the drawing up of such lists?

A. In November, 1927.

Q. Have you compiled lists of musical works, copyrighted musical works, that are on record in Washington?

A. Yes, sir.

Q. Have you compiled an extensive list of such works?

A. Yes, sir.

Q. About how many in number?

A. I have an index of one million two hundred and seventy thousand compositions, and have prepared for circulation, oh, some one hundred thousand copyrighted compositions.

Q. Have you available that index of one hundred thousand

compositions?

A. Yes, sir.

Q. Have you offered to furnish that index to any of the broadcasting — in the country?

A. Yes, I have offered it to all of the broadcasting stations

in the United States entirely free of charge.

Q. How many broadcasters have accepted that offer?

A. Less than two hundred.

Q. This list of one hundred thousand compositions, what

do they represent?

A. Those are the compositions most used. They include every composition used by the broadcasting stations over a [fol. 863] period of three years.

Q. How many musical compositions are copyrighted by

the copyright office each year?

A. Twenty-five thousand.

Q. How many of that twenty-five thousand are owned by the members of ASCAP?

A. On the average of between two thousand five hundred and three thousand.

Judge Hutchinson: What portion of this million two hundred thousand are owned by the members of the association?

Witness: It would be impossible to answer. The figure is a million two hundred and seventy thousand, and it is not truly indicative of the number of compositions that there are, because there is a tremendous amount of duplications in that index.

Judge Hutchinson: Of the one hundred thousand, what proportion of those will be works that belong to the members of the association?

Witness: My guess would be about forty percent of them. Now, of course, many of them are in the public domain. I must state that to fully inform you. These are compositions upon which the copyrights have expired. This list is a list of all compositions performed by all major stations over a period of three years, during which they furnished complete programs.

[fol. 864] Judge Hutchinson: Forty percent of which your member own? Now, what proportion of those are still un-

der copyright?

Witness: I couldn't answer you accurately on that. How-

ever, I could and would make the computations.

Judge Hutchinson: You figure forty percent. Is that just an estimate?

Witness: Yes, sir.

Judge Hutchinson: Did you do the same kind of estimat-

ing on the other?

Witness: You are asking me of that forty percent, what proportion is controlled by the members of the Society?

Judge Hutchinson: I thought you said twenty percent of

the whole one hundred thousand.

Witness: Of the copyrights, yes, sir.

Judge Hutchinson: You can't give an estimate of how many of that one hundred thousand are copyright?

Witness: I prefer not to, because it would be too inac-

curate.

Q. Mr. Mills, did you read the two Statutes in question in this case?

A. Yes, sir.

Q. Are you fairly familiar with the terms of the Statutes?

A. Yes, sir, I think so.

Q. Could the Society, as a Society or organization or com-[fol. 865] bination, operate and do business within the State of Florida with respect to collecting revenue from the performing rights for profit of the compositions of its members under these two Statutes?

Mr. Ellis: Objected to, first, on the ground that it is immaterial, and, second, it is purely an opinion.

Judge Hutchinson: Of course, I think, the question of whether or not they could operate under it would be a question of law for the Court to decide.

Mr. Frohlich: The question is, your Honor, could it get any revenue by operating under it. Could they get a dollar of revenue. Could any group of composers do it. My contention is that under these two Statutes no two composers or more, no combination of any kind, can operate at all in this State and receive a dollar of revenue. However, I will withdraw the question.

Q. You, of course, are familiar with the music publishing business, aren't you?

A. Yes, sir.

Q. And you have been in it yourself?

A. Yes, sir.

Q. And you have had a very accurate and comprehensive knowledge of the business for years, haven't you?

A. Yes, sir.

Q. Now, prior to 1923 how many copies, as a rule, would a hit song sell?

[fol. 866] A. A hit would sell a million or a million and a half copies.

Q. And it would remain popular for how long a time!

A. Oh, a year and a half to three years.

Q. Can you name some of the well known songs that sold

as many as a million or more copies?

A. Songs like "Romona," "Wait Until The Sun Shines, Nellie," "My Old New Hampshire Home," "Let Me Call You Sweetheart," I could go on indefinitely, your Honors.

Q. To your knowledge, how long is a hit song popular

today?

A. Barely ninety days.

Q. If it is a very good song, how long does it sell?

A. A big sale would be one hundred and fifty thousand

copies.

Q. Prior to 1923, did publishers and writers derive a substantial revenue from the exploitation of these compositions on records, rolls, and discs?

A. Yes, sir.

Q. Has there been any change in that compensation since that time?

A. It has diminished up to ninety-four percent.

- Q. From your knowledge of this business, what is this diminution in the revenues derived from sheet music sales due to?
- A. It is due mainly to the tremendous popularity of radio entertainment.
 - Q. The public doesn't purchase sheet music today?

A. No, sir, it doesn't need it.

Q. In other words, is there a great deal more music required today?

[fol. 867] A. Vastly more because of the quick demise of a composition, shorter life.

Q. Did you compile a list sometime ago of the music pub-

lishers in the United States?

A. Yes, sir.

Q. About how long ago was that done?

A. Oh, about the middle of 1937, I would say.

Q. (handing paper to witness) I show you this list and ask you whether that is the list you compiled?

A. I recognize it.

Q. You compiled this list?

A. Yes, sir.

Q. How many publishers are there in this list, approximately?

A. My recollection is about twelve hundred.

Q. Does that list of twelve hundred publishers include publishers who are members of ASCAP?

A. It includes all publishers who registered themselves as such with the Copyright office in Washington, D. C.

Q. Does it include the publisher members of ASCAP?

A. Yes, sir, all of them.

Q. And how many ASCAP publishers are listed in it?

A. I believe presently about one hundred and fifteen.

Mr. Frohlich: I would like to offer this in evidence.

Mr. Ellis: No objection if the list shows that many.

Judge Hutchinson: We are going to take that as correct

[fol. 868] unless there is a showing to the contrary. (Thereupon, without objection, the said list was admitted in evidence and marked Complainant's Exhibit No. 1.)

- Q. How many publishers did you say are included in this list?
 - A. I said approximately twelve hundred.

Judge Hutchinson: Let the record show that there are as many publishers registered in the Copyright office as that list numbers up to.

Witness: In round figures twelve hundred.

Q. Mr. Mills, with the diminution of revenue from the sale of sheet music what other source of revenue is open to the owners of copyright rights and composers?

A. Well, so far as ASCAP is concerned only the public

performance rights.

Q. And if the authors, composers, and publishers should be deprived of their right to obtain revenue from public performance for profit, would they have any substantial revenue from the exploitation of their musical compositions in the State of Florida?

A. They would first—the answer is no.

Mr. Ellis: I feel compelled to ask the Court to strike that answer, your Honor. I don't think this witness can predict

with any degree of certainty it would happen.

Judge Hutchinson: We are presumed to consider only that which is relevant. I don't see much reason, in a case [fol. 869] like this, to have objections. The prevalence of a thing doesn't make it relevant or convincing.

Mr. Ellis: It is the time element, your Honor.

Judge Hutchinson: I am hoping he is cantering to a close. We will let it go in subject to the objection.

Q. Directing your attention, Mr. Mills, to Section 4A of the 1939 Florida Act which provides: (reading)

"It shall be unlawful for two or more owners of the copyrights of musical compositions or dramatico-musical compositions to associate or combine together in any manner, directly or indirectly, for the purpose of issuing blanket licenses for the public performance for profit of their compositions upon a blanket royalty fee covering more than one, or all, of such compositions owned or controlled by the members of such association unless each individual copyright owner included in such association, or such association in behalf of each individual copyright owner, also shall make available to each user of such compositions within the state, at the option of the user, the right to perform publicly for profit each such copyrighted musical composition owned by him or it at a price established for each separate performance of each such composition."

Do you understand what I have read, Mr. Mills? A. Generally, yes, sir.

Q. Is it possible, as a practical matter, to establish a price for each separate performance for each separate composition when there is a blanket license?

[fol. 870] A. The two things are inconsistent. The an-

swer is no.

Q. Can you fix a price in advance or file a schedule in advance with reference to the performing rights of a musical composition?

A. The performance of a particular composition?

Q. Yes?

A. One performance at a price to be fixed in advance?

Q. Yes!

A. No, sir. You have to consider the nature of its use, and a multitude of details.

Q. Well, what factors would you have to take into consideration?

A. The establishment of a price—of fifty, sixty, seventy prices on a single composition; there would be varying prices for varying uses.

Q. Would you have one price?

A. No, sir. There would be one price for use on a sustaining program, another price on a sustaining program as distinguished by day time and night time broadcasts, another price on a sponsored program, another price for a motion picture of a certain size, and still another, and another, and another, and another, and a multitude of prices. Again as regards radio prices as to the power of the station, the radio population within the area of the station, whether or not the station had undivided time, dance halls, night clubs, restaurants, circuses, carnivals and all of endless establishments which use music.

Q. And would the price have to vary from time to time?

A. The price would be determined in such case by each individual copyright owner. I don't know.

[fol. 871] Q. How would each individual copyright owner go about establishing the price?

A. I don't know.

Judge Long: He just stated he couldn't fix it.

Witness: One copyright owner would take a certain set of circumstances into consideration and want a certain price, and another the same; they wouldn't all want the same price.

Judge Long: The answer is you couldn't fix a price?
Witness: Not practically, sir. Theoretically, yes, but not as a practical matter.

Mr. Frohlich: That is all you may cross-examine.

Cross-examination.

By Mr. Ellis:

Q. Mr. Mills, what is your position with ASCAP?

A. I am the Chairman of the Administrative Committee.

Q. Is that in substance an executive committee of the Society?

A. It is a committee, under the articles of the association, empowered to advise with and consult with the Board of Directors, and to generally advise the Society as the term implies.

Q. Is it the chief managing committee?

A. No, sir.

Q. What is the Managing Committee?

A. The management of the business affairs—the general management of the Society is in the hands of an individual [fol. 872] elected by the Board of Directors, and the present General Manager of the Society is Mr. John G. Paine. I was, previously, for some twenty years the General Man-

Q. Will you state briefly the composition of the Board of

Directors of the Society?

A. The board consists of twelve composer-writer members, and twelve publishers, publisher-members, who are divided into groups of four. Four being in the popular field —four being writers in the popular field, four writers in the standard field, and four writers in the production field. Each of those four are divided into groups of two-two authors or writers and two composers of music in those respective fields. Now-

Q. (interrupting) That board, as I understand it, controls the basic policies of the Society?

A. Wait, I haven't finished yet. Those twelve writers are on the board, and there are twelve publisher-members who are similarly divided according to the music they publish into popular, standard, and production music.

Q. Does that board control the basic policies-

A. (interrupting) Under the articles of the association the board has entire jurisdiction of the administration of the affairs of the Society.

Q. How are vacancies in that board filled?

A. In elections—by elections by the Board of Directors.

Q. That is the agency basis—it fixes the terms of the li-

censes with the users of the compositions held by the mem-

[fol. 873] bers of the Society?

A. No, that is the agency to which the management must go for the approval of any licensing arrangement or formula that has been negotiated with the groups representing the users.

Q. It is correct to say as between the holders of the copyrights who are members of ASCAP and the users of copyrighted musical compositions—the prices and terms at which

they are used are fixed by that board?

A. No.

Q. It is not?

A. No. The prices and terms upon which they are used are fixed as the result of negotiations with committees authorized to act as between the management of the Society and the Committees, then, the management of the Society goes to the Board of Directors for approval of the formula and rate which has been set up.

Q. The board is the agency as between the copyright members and the users, or associations of users, with whom negotiations are conducted—they approve the prices for the

copyright members of the Society?

A. After those prices have been negotiated with the Com-

mittees representing the users.

Q. Of the twenty thousand theatres in the United States how many are licensed by ASCAP?

A, I think about fifteen or sixteen thousand of them.

[fol. 874] Q. Of the seven hundred broadcasting stations how many are licensed by ASCAP?

A. All except those in the states of Montana, Washington, and Idaho.

Q. Does not the Society maintain records showing the names of the musical compositions to which copyrights are

held by its members?

A. Well, the Society subscribes to the catalogue of copyrights issued by the Registry of Copyrights, and in that catalogue is included the titles and complete listing of every composition in the United States, both foreign and domestic. Anyone can get that catalogue.

Q. Does that catalogue show which are the members of

ASCAP!

A. The checking of the catalogue issued by the Registry lists all of the ASCAP—the answer is yes.

Q. Does not the Society maintain a list of the compositions controlled by the Society?

A. To the best of their ability, yes, sir.

Q. And they also maintain a list of the owners of those compositions?

A. Yes, sir. Of course, there are some twenty thousand copyrights that expire each year and which are not subject to renewal.

Judge Hutchinson: That is the difficulty inherent in copyrights, but you keep as good a list as you can?

Witness: Yes, sir, but I wouldn't say our list is complete

or entirely accurate.

Judge Hutchinson: It is as complete as most anybody [fol. 875] can make it?

Witness: We think it is the most complete of anybody.

Q. Of the one hundred thousand you referred to as copyrighted and of which ASCAP controls forty percent, you were unable to say how many of that one hundred thousand are in the public domain to which copyrights had expired?

A. Yes, sir.

Q. Do you know how many of those have not been published?

A. Oh, I think, they have practically all been published. I am quite sure of that.

Q. Do you know how many of them are what are called useable or occasionally valuable compositions?

A. They are all used; they are listings from broadcaster's

programs.

Q. Is the sixty percent of the one hundred thousand which is not controlled by ASCAP used as much or as actively as the forty percent which is controlled by ASCAP!

A. Generally, I would think not.

Q. But you are not prepared to say to what extent there is a difference?

A. I am not going to say that our catalogue is a poor catalogue. I am always trying to sell it. I am going to say it is a good one.

Q. I was simply unable to understand your explaination of why the Society or why the copyright holder could not [fol. 876] fix the price in advance for the use of the compositions. Is it correct that there are no prices now for the per piece use of musical compositions controlled by the Society?



A. Not so far as ASCAP is concerned.

Q. There are no per piece prices fixed in advance?

A. That's right.

Q. But there are prices fixed in advance for what you call blanket license use?

A. Well, the rate which is applied for blanket license—which is to apply, is not fixed in advance; it is fixed as of a certain date by a committee of broadcasters. For example, broadcasters are negotiating with us about rates and different formulas for the use of ASCAP's repertoire, and—

Judge Hutchinson: You must answer briefly. Read that question to him. (question read by reporter)

Witness: No. The answer is no.

Q. ASCAP does have licenses with broadcasting stations and theatres for the use of musical compositions controlled by ASCAP at certain stipulated rates, do they not?

A. Yes, sir.

Judge Hutchinson: He has explained all of this.

Mr. Ellis: I understand, your Honor, that they fix a rate for blanket license contracts which run over a period of four or five years' time.

Judge Hutchinson: He exclained that this morning.

Mr. Ellis: I withdraw the question.

[fol. 877] Judge Hutchinson: Do you know whether these other publishers and producers, who are not members of ASCAP, do fix in advance for use per piece prices for their compositions?

Witness: No, sir.

Judge Hutchinson: You don't know or they do not?

Witness: They do not.

Judge Hutchinson: Do they fix a blanket license rate like you do?

Witness: Yes, sir.

Judge Hutchinson: Everybody follows the same system as ASCAP?

Witness: Yes, sir.

Judge Hutchinson: And the only difference between you and them is that you belong to the association and they don't? Is that about the only difference?

Witness: Yes, sir.

Judge Hutchinson: Is the association a closed association, or can anybody join it? Witness: Any qualified composer, publisher, or auth

can join it.

Judge Hutchinson: The reason you haven't got ma more publisher and author members is not because th have been excluded, but because they haven't applied f membership?

Witness: Yes, sir. They have established their of [fol. 878] organizations of this kind, and proposes to iss

those licenses upon a blanket basis.

Q. You do have some requirements as to the number

compositions?

A. Eligibility for membership of a composer dependence upon his having written and regularly published at leastive of his compositions. Eligibility for a publisher depends upon his having established a catalogue of must generally used in the type of establishments licensed the Society.

Q. Isn't it a fact that the composer members composed the bulk of the desirable music published in this country

A. That's a matter of opin-on. I am always trying sell our catalogue. Yes; I will say yes.

Mr. Ellis: Read him the question. (question read la reporter)

Witness: I was trying to say that I think the ASCA catalogue embraces most of the best music.

Q. Isn't it a fact that the music publisher members of ASCAP do most of the commercially profitable music pullishing business in this country?

A. I think that is so.

Q. And all of the well known, active, and well paid composers are members of ASCAP?

A. Many well known composers are not members of

ASCAP.

Q. But the great majority are members?

A. Yes, the majority.

- Q. And the same is true of the authors? [fol. 879] A. Yes, sir.
- Q. Have the rates of the Society been reduced generall in the last ten or fifteen years?

A. No, sir.

Q. They have gone up pretty steadily?

A. Yes, sir.

Judge Hutchinson: The Court will take a ten minute recess.

(After recess)

Mr. Ellis: With the permission of the Court, Mr. Bennett would like to ask the witness a few questions.

Judge Hutchinson: All right, but it is not a good idea. I do not like to complicate the record.

By Mr. Bennett:

Q. Mr. Mills, I would like to clear up a little bit of the explaination you made about composers and authors, members, and membership requirements of the Society. You stated, I believe, that under the articles of the association that they should have not less than five numbers regularly published, is that correct?

A. Yes, sir.

Q. Explain what you mean by regularly published?

A. By someone other than themselves.

Q. Does that mean that they might be published by a non-member publisher of ASCAP?

A. Yes, sir.

[fol. 880] Q. Has that always been the rule?

A. Always.

Q. Who was Mr. Rosenthal?

A. There are lots of Mr. Rosenthals.

Q. Was there a Mr. Rosenthal connected with ASCAP?

A. No. Did you say is there?

Q. No, was there?

A. Yes, sir.

Q. A Mr. J. C. Rosenthal?

A. Right.

Q. What was his position with ASCAP?

A. General Manager.

Q. Did you know Mr. Rosenthal?

A. Very well.

- Q. Did you ever see a memo signed by Mr. Rosenthal at any time?
 - A. Did I ever see a memo signed by him?

Q. Yes.

A. know his signature if that's what you mean.

Q. Are you familar with his signature?

A. Yes.

Q. I hand you a letter under letter head of ASCAP, as ask you whether that is Mr. Rosenthal's signature? (han ing letter to witness)

A. Yes, that is his signature; a rubber stamp of h signature.

Q. Did that originate in the office of ASCAP?

A. So far as I know.

Mr. Bennett: I offer it in evidence and ask permissis [fol. 881] to substitute a photostatic copy.

Judge Hutchinson: What is the materiality of the letter Mr. Frohlich: The letter was written in 1929, your Honor

Judge Hutchinson: I don't suppose it makes any difference as to what were the rules of the Society.

Mr. Bennett: It demonstrates one of the unseen method by which the power of the Society is concentrated by i publisher members.

Judge Hutchinson: Is that a part of the case of the State Mr. Bennett: It demonstrates the evil which the Legi lature had in mind when it enacted the Statute.

Judge Hutchinson: You think you were wrong in saying that the virtues of the organization were immaterial?

Mr. Bennett: I meant to say that the evil of the organization we are attempting to correct was something to tall into consideration.

Judge Hutchinson: The question of the evil of not allowing the people to buy music at a fair price, but not wh controlled it. I am thinking of evil from the standpoint ouse, and you are thinking of it from the standpoint of the publishers.

Judge Long: The purpose of that, it seems, is to impead [fol. 882] this man's testimony.

Judge Hutchinson: The testimony was is that the presensituation. He didn't say it had never been.

Mr. Bennett: I think, your Honor, he did state it has always been.

Judge Hutchinson: I think we should rule on whether is material or immaterial. Whether that rule which yo say they had is material in the case. I didn't suppose i was.

Mr. Bennett: It goes directly towards restraint in trade Mr. Ellis: If the Court rules there is not any need to put in this letter—most of the testimony by this witness is o no use. The only purpose of this is to show that it con-

tradicts the testimony-

Judge Long: If that is the case it is purely a question of impeachment of this witness, and if this testimony is offered on behalf of the defense it ought to go in when the

defense offers its witnesses.

Mr. Frohlich: My objection is that Mr. Bennett asked the witness whether or not he recognized his signature and he stated that this was a memo from Rosenthal to Mills, but it is a letter written by Mr. Rosenthal to a man named Donald P. Fina on February 20, 1929. I don't see where that impeaches this ...itness.

[fol. 883] Mr. Ellis: I would like to have it marked for

identification.

Judge Hutchinson: All right.

Mr. Ellis: May I have a photostatic copy marked.

Judge Hutchinson: Yes.

(Defendant's Exhibit No. A1 for Identification)

Q. Mr. Mills, I hand you another letter and ask you whose signature is at the bottom of that letter (handing letter to witness)?

A. That's my signature.

Q. That letter was written and signed by you?

A. Yes, on February 26, 1929.

Q. Will you state what that letter says?

A. It is addressed to Mr. Donald Pascal Fina and it reads (reading), "This acknowledges receipt of your application for membership."

"On its face however, your record does not show that you

are as yet eligible for membership.

"Our regulations require that an applicant for writer membership—

This is addressed to the same person as the other letter. (continuing) "On its face however, your record does not

show that you are as yet eligible for membership.

"Our regulations require that an applicant for writer membership must have written and had published by publisher members of this Society at least five numbers. At present your status does not meet this requirement.

[fol. 884] "We shall be glad to have you keep us informed of the progress which you made and just as soon as you

Q. Mr. Mills, on your direct examination you testified that you had a meeting in 1922 with the various representatives of the broadcasting industry?

A. Right.

Q. At that meeting, was that meeting taken down by a stenographer and recorded?

A. It was reported, yes, sir.

Q. Did you at that meeting make the statement to those broadcasters present that ASCAP then—that ASCAP's then membership controlled ninety percent of the copyrighted popular music of the United States?

A. I probably made a statement to that effect. Just as the broadcasters say they broadcast to fifty million people,

I say ninety percent or whatever I think.

Q. Do you control ninety percent?

A. I don't know how much we control; it is a matter of

public record. I haven't examined it.

Q. Have statements to that effect been made by you or other representatives of ASCAP to Congressional Committees in Congress?

A. To the effect that we control ninety percent?

Q. Yes, ninety percent of the popular music? [fol. 888] A. I don't think in that exact language. We have always professed to control a large portion, and to be able to furnish a repertoire sufficient for anyone's needs.

Q. Did you testify in Nebraska last September that you had made that statement—that the membership of ASCAP had increased each year since then by the addition of new publisher members, composers and authors, and foreign socities, and that the ratio remains proportionately the same?

A. I don't remember, but I would testify to that now, or

then, because it is a fact.

Mr. Bennett: That's all.

Redirect examination.

By Mr. Frohlich:

Q. Mr. Mills, what is the fact with respect to eligibilty for membership in ASCAP of a writer or composer?

A. The rules are as stated, that anyone who is-

Judge Long: He has already testified to that.

Judge Hutchinson: I think he has a right to explain that letter. Will you tell us why in 1929, you wrote that letter which you read into evidence?

Witness: I didn't get a chance to see the dictation marks on that letter, and I wondered if it was written—I noticed it was the same applicant. I don't know whether I dictated the letter; I sign a great pile of letters.

Q. Was there any discussion between you and the members of the administrative committee of ASCAP with refer-[fol. 889] ence to eligibility on or about the year 1929?

A. Not that I recall,

Q. Can you name some writers today who are members of ASCAP whose works are published by non-ASCAP publishers?

A. Well, I can't name them from my recollection, Mr.

Frohlich.

Q. As a matter of fact, don't publisher members of ASCAP publish works of composers who are not members of ASCAP?

A. Yes, sir.

Q. Has that been true through the years?

A. Yes, sir.

Q. Does the Society deal in any sheet music?

A. No.

Q. Records, rolls, or discs?

A. No, it deals solely and exclusively with the nondramatic public performance rights of all of its members and nothing else.

Q. Do the users of music in dance halls keep logs of the

compositions they use each night?

A. No.

Q. Do the hotels and restaurants keep logs?

A. No, sir.

Q. Do radio broadcasters?

A. In some cases.

Q. If a radio broadcaster were compelled to pay for the use of public performance on compositions on programs [fol. 890] emanating from its station it would be required to keep logs of its programs, wouldn't it?

A. There would be no other way in which it could be done.

Q. Would the keeping of such records entail expense?

A. Tremendous expense.

Judge Hutchinson: That is not in rebuttal; it is a continuation of the direct and the asking of the obvious.

Mr. Frohlich: That is all.

(Witness excused.)

Thereupon, to further maintain the issues on their own half, the Complainants produced as a witness one Joseffeed Paine who, being first duly sworn, testified as follows

Direct examination.

By Mr. Frohlich:

Q. What is your full name?

A. John Gregg Paine.

Q. Where do you reside, Mr. Paine?

A. Wilton, Connecticut.

Q. How long have you been a resident of that State?

A. Seven years.

Q. Are you at present connected with ASCAP?

A. I am its General Manager.

Q. And how long have you been such?

A. Since May, 1937.

[fol. 891] Q. Prior to assuming your duties as Gener Manager of the Society what occupation did you follow?

A. I was in the legal—immediately prior to that I was Chairman of the Board of the Music Publishers Protective Association. Prior to that I was in the legal department of Warner Brothers Pictures, and prior to that I was with the Victor Talking Machine Company.

Q. How long were you with the Victor Talking Machin Company?

A. From 1914 to 1927.

Q. What were your duties in that company?

A. I had charge of copyrights—the clearance of music compositions for the purpose of manufacturing records.

Q. Did you in the course of your occupation familiaris yourself with the music publishing business?

A. Oh, yes, I had to.

Q. Did you come in contact with any publishers an writers?

A. Yes, all over the world.

Q. Did you become familiar with the customs and usage of that business?

A. Yes, sir.

Q. And do you know how publishers and writers operate

A. Yes

Q. Let me show you this list of compositions of Ger Buck, one of the plaintiffs in this case, and ask you if the was prepared under your supervision? (Handing paper to witness.)

A. Yes, it was.

[fol. 892] Mr. Frohlich: I would like to offer that in evidence.

Mr. Ellis: No objection.

Mr. Frohlich: I had intended bringing Mr. Buck down here but he is ill.

(Thereupon, without objection, the said "List of Compositions By Gene Buck, was admitted in evidence, and marked Complainants' Exhibit No. 2.)

Q. Now, you say your function was to assist in the clearing of titles of copyrighted compositions, will you explain

in detail what is necessary to clear those titles?

A. For the technical reproduction of a copyrighted musical composition, unless there is a license granted, there is an infringement of the copyrights, and we had to obtain a license to manufacture these things, and we had to do it before we employed our artists, so that I had to make a study of the copyright status of the work we desired to reproduce, search the records—search the public records. If it was an American copyright, I would search the copyright records in this country, and if it was a foreign copyright, I had to ascertain from the records of those countries who owned the copyright, and to ascertain who owned the mechanical reproduction rights of that composition, because the copyrights may not always be owned by the same persons. Obtaining that I had to contact the man-the corporation that owned the mechanical reproduction right and get permission from him to record if and whenever I entered into a [fol. 893] written licensing agreement with him.

Q. Did you frequently encounter difficulty in clearing dif-

ferent copyright titles?

A. Yes, sir.

Q. Did you find that many rights under copyrighted musical compositions had been carved out and given to various people?

A. Yes, you always had to ascertain in who was the owner

of the particular right you wanted.

- Q. Was there sometimes a dispute between two or more claimants?
 - A. Yes, sir, frequently.

Q. In such cases were you able to clear a title?

A. No, we probably wouldn't record.

Q. Now, the Victor Talking Machine Company is the largest company of its kind in this country, isn't it?

A. It was in those days and still is, I think.

Q. Did you familiarize yourself with the titles of compositions that are in the public domain in the United States?

A. Not with all of them. I had a catalogue which I had built up over the years of over nine hundred thousand numbers, and I had the physical music of one hundred thousand.

Q. And this nine hundred thousand were in the public

domain and no one had any rights in them?

A. Yes, in the United States.

Q. Now, this Victor Talking Machine Company, does it have some connection with the National Broadcasting Company?

A. It is now owned by the Radio Corporation of America

[fol. 894] which owns NBC.

Q. Did the Victor Talking Machine Company make available to the National Broadcasting Corporation this catalogue of over nine hundred thousand numbers?

A. If they still have it. It was 1927 when I left. They

could have very readily.

Q. Hasn't there been a change in the dancing habits of

the country in the past few years?

A. Yes, they change constantly. Today, at the present time, there is a vogue for rhumbas and congas—dances which have developed in Cuba and Trinidad.

Q. Has this change in the dance habits of the country ef-

fected the composition of music?

A. Yes, of popular music. It always does and always has. When the tango came in there was a great influx of dancing compositions of that kind, and when it was Black Bottom and the Charleston and the Funny Hug, then, the composers were writing in that idiom.

Q. Hasn't there been a tendency on the part of the music world to take old numbers and adopt them to modern

dancing ?

A. Yes, sir, a great quantity. For instance, a little lyric like "A Tisket A Tasket".

Q. That was in the public domain for a number of years, wasn't it?

A. Yes, in the original form.

[fol. 895] But a new arrangement has been made?

A. It is copyrighted by an ASCAP publisher. Yes.

Q. That arrangement could have been made by anybody, couldn't it?

A. Yes, sir.

Q. And the broadcasters can make the same arrangements as others do?

A. Yes, sir.

Q. It simply involves a matter of research and expense?

A. Yes, and possessing a knowledge of public taste.

Q. Would you say there is enough in the public domain today to furnish sufficient dancing entertainment for the public if someone were willing to make the arrangements?

A. For rhumbas you can go to Cuba and bring them back by the boat load; tangos from Argentina, and congas from Trinidad.

Q. That is true of tango music?

A. Yes, the Maxixie or anything. Polkas are popular now since the introduction of "The Beer Barrel Polka"—people like that kind of music some time.

Q. What is the American Record Company catalogue?

A. The American Record Company today is a consolidation of a number of older companies like Columbia and Brunswick, and I understand they all consolidated and combined and formed the American Record Company, and which, I think, was purchased by the Columbia Broadcasting System.

Q. Is that an extensive catalogue?

[fol. 896] A. Yes, very.

Q. Are the music compositions in that catalogue works that are in the public domain?

A. Some of them.

Q. What is the Langloy and Wentworth Catalogue?

A. Langloy & Wentworth is a company organized for the purpose of supplying radio broadcasting stations with recordings of works in the public domain—what they call a tax free catalogue.

Q. Is it very extensive?

A. I am really not familiar with it at the present time. It is quite an extensive catalogue and has been in operation for eight or ten years.

Q. What is the Schubert Publishing Company?

A. Schubert or Schuberth Company.

Q. Schubert†

A. The Schubert Company owns a great many of the

operas; it is a member of ASCAP. The Schuberth Company is rather a substantial publishing company not a member of the Society.

Q. It controls the German music?

A. Yes, not a lot of American copyrights.

Q. What is the Universal Edition?

A. It is a European publishing company having extensive houses in both Berlin and Vienna. It is now represented in the United States by Associated Music Publishers.

Q. Is this Universal Edition and Associated Music Pub-

lishers connected at all with the ASCAP? [fol. 897] A. It is a competitor.

Q. Have these two companies an extensive catalogue?

A. Yes, and the Universal Edition is a very large catalogue.

Q. How about G. Ricordi of Milan?

A. That is reputed to be the largest publishing house in the world. It controls the operas and all of the copyrights for all the great Italian music; such composers as Verdi, Puccini, Boito and Mascagni.

Q. Are any of the compositions owned by G. Ricordi of Milan controlled by ASCAP?

A. No.

Q. Now, as a matter of fact, isn't the greatest music in the world free?

A. Well, as a salesman I hate to admit that, but from the standpoint of artistic music—great music, the great rusic of the world is in the public domain; those men whom I have just named and Beethoven, Brahms, Mendelssohn, Bach.

Q. Who is Pasderich?

A. Who?

Q. Did you ever hear of the Pasderich Catalogue?

A. No. Oh, you mean Pacdirek.

Q. Yes. Isn't that published in thirty-two volumes?

A. Yes, sir.

Q. What does it represent?

A. It is a catalogue which has endeavored to present all of the music that has been published by anybody anywhere [fol. 898] in the world at any time, and, of course, the bulk of that, I would say ninety-five percent of that, of necessity is public domain music.

Q. Is this public domain music which appears in these

various catalogues I have mentioned available to users in the United States in its original form?

A. Yes.

Q. Have you frequently visited the Library of Congress?

A. Yes, sir.

Q. And the Smithsonian Institute?

A. Yes.

Q. Do these two libraries contain the original manuscripts

or printed records?

A. The Library of Congress has an enormous collection of works; it runs into the hundreds of thousands—some of them original, but they have the published copies of works at the New York Public Library, the Boston Public Library, the Philadelphia Public Library, and the Flagler Library in Philadelphia has a quite a substantial library of music.

Q. Have you heard of the Hoffmeister Catalogue?

A. Yes, sir.

Q. Isn't that larger than the Pacdirek Catalogue!

A. It is more authoratative; we use it in preference to that.

Q. If I were to use a work of Mozarts, which is in the public domain, would it be possible for me, Mr. Paine, to find that work in either of the libraries you have mentioned, or any of them?

[fol. 899] A. The great bulk of Mozart's works, in one form or another, are available in the Library of Congress,

the New York Public Library, and if you-

Q. (interrupting) Would you say that the works of these composers, which are in the public domain are available to anyone who wants to play them?

A. Yes, sir.

Q. They are available, of course, in their original form?

A. They are available in all kinds of arrangements. If it is European the instrumentation is different, and you have to arrange and adopt it for American consumption—for American orchestral set ups.

Q. If when a broadcaster wants a particular song of

Mozarts-

A. (interrupting) You can get it.

Q. (continuing) —you can get it in this country in one of those four or five libraries you mentioned and in these different catalogues?

A. Yes, everything they have written is there.

Q. If I were a broadcaster and had to have a special

arrangement or orchestration of Mozarts, could I get such an arrangement from that original?

A. Yes, sir.

Q. As a matter of fact, isn't that what a great many

publishers do today?

A. Yes, for instance, we took Debussy's "Reverie" and [fol. 900] made a very attractive arrangement out of it. It is called, "My Reverie". As "My Reverie" it was very popular, but as Debussy's "Reverie" it had very little public interest.

Q. In other words, a great deal of value is added to one

of the old works as new orchestrations are made?

A. Yes, a lot of public interest.

Q. As a matter of fact, don't a great many of the popular songs of today base their melodies on the music of the old masters?

A. Quite a lot.

Q. Isn't it merely a matter of making arrangements and publicizing these arrangements of old tunes?

A. Well, not one hundred percent. Included in the membership of the Society are a very great many great creators.

- Q. But at the same time, a great deal of the popular music of the day is based upon old public domain numbers?
- A. Yes, sir. For instance, "Three Blind Mice", "A Tisket A Tasket", "The Mulberry Bush", to take some of the nursery rhymes, and the song "My Reverie" which I have just mentioned is another type, and I could go on and name hundreds of them.
- Q. Do you know whether the National Broadcasting Company has a library of its own?

A. Yes.

Q. How extensive is that?

- A. I haven't seen it, but I understand it is very extensive.
 - Q. Does' that contain public domain music?

A. Yes, sir.

[fol. 901] Q. Has the Columbia Broadcasting System such a library?

A. Yes, sir.

Q. And is it very extensive?

A. Yes, sir.

Q. Does it contain a great deal of public domain music!

A. Yes. Surely.

Q. What was the Radio Foundation?

A. That was something before my time, but I understand it was organized by—created by the National Association of Broadcasters to build up a library of music which would be available to broadcasting stations in competition with the offerings of ASCAP.

Q. Don't the broadcasters in the country make license agreements for public performance for profit for compo-

sitions other than those owned by ASCAP?

A. Yes, sir.

Q. Can you name some of the organizations with whom

they deal?

A. The Society of European Stage Authors and Composers known as SESAC, and I understand that they enter into independent contracts with composers and creators of works that haven't been published or copyrighted. Then, they have the big transcription societies—firms like Davis & Schwegler.

Q. Do these people have many thousands of composi-

tions?

A. I don't know how many, but I understand Davis & Schwegler has thousands.

Q. And are those catalogues made available to the broad-

casters?

[fol. 902] A. Yes, surely, but by contract—you pay for them.

Q. What is Broadcast Music, Inc.?

A. A private corporation owned by a lot of broadcasters or broadcasting stations who have subscribed stock. Its purpose is to build up and lay a foundation for a library of music which will be available to radio stations throughout the country in competition to the offerings of ASCAP.

Q. Was that organization organized within the past year

or two !

A. Yes, within the last eight or nine months.

Q. I show you this photostatic copy of a proposed contract between a broadcaster and Broadcast Music, Inc., and ask you whether you saw the original of that (handing paper to witness)?

A. Yes, I did. I saw the original.

Q. Is this a true copy?

A. It is a photostatic copy.

Mr. Frohlich: I would like to offer that in evidence. Judge Hutchinson: What is the purpose of that?

Mr. Frohlich: They have talked about blanket licenses, and the Statute purportedly tried to do away with blanket licenses, and here is Broadcast Music Inc., organized by the broadcasters themselves, and they are going to license individual broadcasters to use its music and do the same thing. The only visible—the only sensible way in which these broadcasters can operate is under a blanket license, [fol. 903] and their own organization recognizes it. It seems so inconsistent with this Statute.

Judge Hutchinson: The broadcasters didn't preparedidn't pass the Statutes, and I don't see any reason for

it going in for the purposes of your case.

Mr. Frohlich: May I be permitted to read the first paragraph, your Honor.

Judge Hutchinson: Can't you state it? Mr. Frohlich: It is not long, your Honor.

Judge Hutchinson: All right.

Mr. Frohlich: Thank you, your Honor. (reading)

"1. Music hereby grants to Broadcaster a non-exclusive license to perform by radio broadcasting over Station—all musical works the copyrights or rights to grant broadcasting performing licenses of which Music may, during the term hereof, own. Music agrees to deliver to Broadcaster from time to time during the term hereof lists of musical works covered by this license. The rights granted hereby shall include the right to broadcast dramatic performances of such musical works as Music at any time shall have given notice to Broadcaster that it owns the dramatic performing rights thereof."

Mr. Ellis: We object on the ground that - immaterial

and irrelevant, and has-

Judge Hutchinson: Let the record show you offered that kind of a contract subject to their objection, and admit it [fol. 904] subject to the objection.

(Thereupon, subject to the foregoing objection, the said contract was admitted in evidence, and marked Complainants' Exhibit No. 3.)

Q. Is Mabel Daniels a member of the American Society?

A. Yes. She is a very distinguished composer.

Q. Do you know who has published her compositions! A. Arthur P. Schmit of Boston, Q. And is he a member of the Society?

A. No, he is not.

Q. How long has she been a member of the Society!

A. Quite a number of years; long before me.

Q. Is Mrs. Edward MacDowell a member of the Society!

A. Yes, sir, she is.

Q. She is the widow of the distinguished composer of the same name?

A. Yes, sir.

Q. Now, do the publishers print up several copies of the compositions when they publish them?

A. I don't know exactly what you mean by that.

Q. Do they print up great quantities of the songs when they publish them?

A. As a rule, five thousand copies. Q. Then, how do they sell them?

A. Well, a number of them are sent out free to performers.

[fol. 905] Q. What are those called?

A. Professional copies. The balance are placed on sale through jobbers and dealers.

Q. They are sent to jobbers and dealers in various parts

of the country?

A. Yes. The whole merchandizing method is a complicated business. The popular jobbers merchandize by quantity sales; they will sell to anybody who will buy a quantity, say, two hundred copies at a time, and at a discount. Usually the only person capable of buying those are jobbers and they, in turn, sell to retailers.

Q. Would the retailers in the State of Florida have to

go to the jobbers?

A. Yes.

Q. Is that customarily done?

A. Yes.

Q. Is this sheet music ever sold by the publisher to the jobber?

A. Yes.

Q. Is it sold on consignment or outright?

A. Outright.

Q. And has the publisher any further control over that particular sheet of music?

A. No.

Judge Hutchinson: I might suffer this, but counsel is evidently reading from some record. Why should we take

the time to find out something that is already in the record? [fol. 906] Why can't we put into this record such of that record as is material?

Mr. Frohlich: I was only going to ask a few more ques-

tions and then rest, your Honor.

Judge Hutchinson: All right, if there is only a little more.

Q. From your knowledge of the music business, could the individual writer, composer, or publisher license the performing rights of his works in the State of Florida under these two Statutes?

A. No. I don't think so.

Q. Is the combination between him and the other members of his craft necessary in order to allow him to market his compositions in this State?

A. They must have a cooperative similar to the Society

for the merchandizing of his property.

Q. Under this Statute, Mr. Paine, could the publisher distribute professional copies of his works to stimulate the interest of the people of the State of Florida!

A. No.

Q. Could the publisher under these Statutes furnish professional copies to orchestras and other performers in the State of Florida?

A. No.

Q. And would the failure to do that effect the business [fol. 907] of the publisher?

A. Materially.

Q. Is it necessary for publishers to furnish these professional copies?

A. Yes, sir.

- Q. Have they been furnished for many years?
- A. Yes; it has been the custom. I would say yes.
- Q. Now, take the average piano edition of the copyrighted edition, what does that usually sell for?

A. The retail price is twenty-five or thirty-five cents.

Q. If the publisher were to put on that composition, under the provisions of these Statutes, the price for each and every use of that composition would he be able to sell that composition in the State of Florida for twenty-five or thirty-five cents?

A. If he had to put the price on it for each and every use, the printing cost would be so high it couldn't be done.

Q. How many pages are there to the usual composition?

A. About four.

Q. if the publisher were compelled to have on it the complete list of the schedules of all of the uses and prices how many pages would he have to print?

A. It would take about four pages of printing to put on

the price list for every conceivable kind of use.

Q. And would that effect the price of the articles?

A. It cost twenty-one dollars a thousand under the union [fol. 908] scale of labor—rates, and counting the increase in the cost of mailing, the cost would be very, very large.

Q. Does the Society audit the books of the broadcasters

from time to time?

A. Yes, sir.

Q. Does the Society from time to time find deficiencies in the reports of the broadcasters?

A. Yes, sir.

Q. Have they been substantial amounts?

A. Yes, a deficiency in the first audit of over seven hundred thousand dollars was found, and in the second audit a deficiency of five hundred and thirty-five thousand dollars.

Q. And have there been deficiencies in the State of Florida?

A. Yes, sir.

Mr. Frohlich: Your witness.

Cross-examination.

By Mr. Ellis:

Q. Mr. Paine, it is a fact that there are many thousands of musical compositions which are copyrighted, but which do not sell because they don't strike the public fancy, or for some other reason are not in public demand?

A. Yes, sir.

Q. Therefore, they are only occasionally profitable?

A. Right.

Q. The percentage of the total number that are profitable is comparatively small?
[fol. 909] A. By that, I suppose, you mean those that catch the public fancy?

Q. Yes.

A. Yes, if a publisher strikes it once in thirty times he is fortunate.

Q. Isn't it a fact that ASCAP controls the greater share of the licensing and public performance rights of the music that is occasionally profitable in this country?

A. I would say yes, but I think you would have to always

say yes with an explanation.

Q. Do you have an explaination?

A. Yes, I think we are good merchandizers and good showmen. I think we understand a lot about public taste and interests, and if other catalogues used the same skill in the selection of their material, the same skill in the exploitation of their material, then, they would gain popularity similar to that of ASCAP, as it is purely a matter of merchandizing.

Q. You don't mean to slight the efficiency and the mode

or organization of your Society, do you?

A. There is nothing unique in the mode of organization of our Society. It is duplicated all over the world.

Q. But the personnel is not? A. Well, that is very flattering.

Q. Isn't it a fact, that on account of the personnel and the nature of the copyright properties that the Society controls that enables it, along with its merchandizing methods, to get a great deal more revenue than the rest [fol. 910] of them?

A. I think that is undoubtedly so.

Mr. Ellis: No more questions.

Mr. Frohlich: That is all, Mr. Paine.

(Witness excused.)

Mr. Frohlich: This morning, the Court will recall, we stipulated that the depositions could go in along with some of the Nebraska testimony. I don't want to burden this Court with the reading of the depositions, and I thought instead of reading them I would make the formal offer to put them in evidence, and if there are objections your Honor could pass upon them.

Judge Hutchinson: All right.

Mr. Ellis: I would like to suggest that we simply inform the reporter as to what part of the records should go into the record. So far as the record is concerned counsel will get together that portion of the depositions to be copied in the record.

Judge Hutchinson: All right. Mr. Frohlich: Plaintiff rests. Thereupon, to maintain the issues on their behalf, the defendants produced as a witness one William Burton Richardson who, being first duly sworn, testified as follows:

Direct examination.

By Mr. Ellis:

[fol. 911] Q. State your name and residence, please.

A. William Burton Richardson, and my residence is 216. Quackenbas NW, Washington, D. C.

Q. What is your profession, Mr. Richardson?
A. I am an attorney-at-law and accountant.

Q. State briefly your technical education, please.

A. In 1929, I graduated from Yale University with an A. B. Degree; in June, 1933, I graduated from LaSalle Law School, Washington, D. C., with the degree of LL.B. and in 1938, I graduated from Benjamin Franklin School of Accountancy with a degree of B.C.S.

Q. You are now practicing law and accountancy in the City of Washington, D. C.?

A. Yes, sir.

Q. What was your occupation before entering the practice of law?

A. Assistant Technical Adviser to the United States Social Security Board.

Q. You are famil-ar with the manner of keeping records in the United States Copyright Office?

A. Yes, sir.

Q. Have you prepared an exhibit entitled, "Compilation Made From ASCAP's Sticker Card List Of American Publishers And Records Of United States Copyright Office Showing Numbers of Musical Compositions Copyrighted July 1, 1909 to November 27, 1939 by Publishers Listed in ASCAP Stickers Who Are Not Members Of (1) ASCAP, [fol. 912] (2) SESAC, Or (3) American Music Publishers'?

A. That is correct.

Q. It should be Associated Music Publishers instead of American Music Publishers?

A. That is correct.

Q You personally prepared that list from the sticker card list of ASCAP's sticker card list of American Pub-

lishers and the records of the United States Copyright Office?

A. Yes, sir.

0

Q. Describe briefly the mode of compilation of that ex-

hibit (handing exhibit to witness)?

A. I received a group of cards from Mr. Bennett which was the ASCAP sticker card list containing some twentyfive hundred, I think, twenty-seven hundred cards. These cards had a yellow sticker placed upon them three by five in size. In making this compilation, which I have before me, it was necessary for me to withdraw the members of ASCAP, the members of SESAC, and the members of AMP—SESAC being, of course, the Society of European Stage Authors and Composers, and AMP is the Associated Music Publishers of America. Then, with these cards I went to the Copyright Office and searched the files for all the copyrights which the remaining cards contain in here which are non-members of these associations. through three files which are broken down, first, from July 1, 1909, to June 30, 1927, the second file is from July 1, 1927, to November 6th—

[fol. 913] Q. (interrupting) Just a moment. This exhibit in brief shows the numbers of musical copyrights owned by persons who are not members of one of those three

Societies?

A. That is correct.

Q. And you tabulated the results on an adding machine!

A. Yes, sir.

Q. And you did the work personally?

A. Yes, sir.

Mr. Frohlich: We object to that on the ground that it is incompetent, immaterial, and irrelevant. In the first place, it is not according to the witness' own testimony-his statement of what is on record in the Copyright Office. He says, if I understand him, that he took ASCAP publishers and SESAC publishers, and publishers which appeared on the list of twelve hundred—which I offered in evidence and he compiled a list and which your Honor rejected—

Judge Hutchinson: Do you want to reduce him to num-

bers?

Mr. Frohlich: It doesn't represent what is on record in the Copyright Office. These are ASCAP's and the copyrights of everybody else. Q. Are the records in the Copyright Office indexed?

A. They are.

Q. Now, did you make up this exhibit from the names of the copyright holders shown by those indices [fol. 914] A. Yes, sir.

Judge Hutchinson: It is complete so far as it goes. Objection overruled.

(Thereupon, the said Compilation was admitted in evidence and marked Defendants' Exhibit No. A-1.)

Mr. Ellis: Now, with the Court's permission and counsel's cooperation, I would like to get up a stipulation to give the results in the record.

Judge Hutchinson: This is an examination of publishers?

Mr. Frohlich: Yes, your Honor, publishers.

Mr. Ellis: The purpose is to show the comparative control by non-members.

Q. Will you explain to the Court what the classifications E, E-1, and E-2 are at the head of the columns from that exhibit?

A. It is the practice of the Copyright Office to make three divisions of the musical copyrights presented to them to be copyrighted. In other words, there is an E classification, and an E-1 and E-2 classification. E stands for the published compositions reproduced for sale or distribution to the public and placed on sale, sold or publicly distributed. E-1 stands for published musical copyright arrangements on old copyrighted material, and E-2 stands for unpublished copyrighted manuscripts.

Q. Will you read the totals, commencing over again? [fol. 915] A. The period from July 1, 1909, to June 30, 1927, for the Classification E, that E is the published classification, 17, 271. Now, for the same period, Classification E-1, which are the arrangements of copyrighted works, 8,957. And for the Classification E-2, which are the unpublished manuscripts, 1,825. For the next period of years, from July 1, 1927, to November 6, 1937, the E Classification, which is the published copyrighted music, 7,033 copyrights. For the E-1 Classification 2,256 and for the E-2 Classification, which are the unpublished, 4,286. For the third and last period of years which is from November 7, 1937, to November 27, 1939, the E Classification, the published ones, 623, the E-1 Classification, 418, and the E-2 Classification,

470. The total copyrights for this entire period from July 1, 1909, to November 27, 1939, for these cards is 43,139.

Judge Hutchinson: That includes all publishers—ASCAP and everybody else?

Witness: The non-members.

Judge Hutchinson: I thought he said publishers exclud-

ing these different organizations.

Mr. Ellis: He commenced with a set of cards bearing the names of the music publishers in this country, and took out the names of these three societies and ran through the Copyright Office indices of the remainder non-members.

Judge Hutchinson: I see.

[fol. 916] Q. Mr. Richardson, have you prepared another exhibit entitled, "Illustrative List Of Musical Compositions And Data Relative Thereto (Excepting Prices) Such As Might Be Filed By A Music Publisher With The Comptroller Of Florida For Compliance With Sections 2(a) And 4(b) Of The "New Law," Chapter 19,653, Acts Of 1939, Prepared From Records Of United States Copyright Office"?

A. I have.

Q. Did you prepare this exhibit of a proposed filing with the Comptroller of Florida from the records of the Copyright Office so far as might be necessary for a publisher to consult those records?

A. I did.

Q. What was the approximate date of preparations

A. I worked on March 18, 1940, and April 1st, April 3rd, April 4th, and April 5th, I think.

Q. Did you keep a record of the time required?

A. I did.

Q. And how long did it take you to compile this proposed or sample illustrative list?

A. Nineteen and a half hours; about two and a half days working time.

Mr. Frohlich: We object to this as an exhibit. It is incompetent, irrelevant, and immaterial. It is an attempt, on the part of the defendants, to set up what they believe to be a compliance with the Statute.

[fol. 917] Judge Hutchinson: What is that?

Q. Mr. Richardson, did you select a particular, actual, operating publisher as an illustration or example with reference to which you prepared this list?

A. I did.

Q. What was that publisher?

A. Broadway Music Corporation.

Q. And is that an operating music publishing house?

A. It is.

Judge Hutchinson: Is that a member of the association? Witness: It is. That is my understanding.

Q. How many compositions are included on this list?

Judge Hutchinson: Does it include every composition it held?

Witness: So far as I was able to ascertain.

Judge Hutchinson: That purports to be an examination made from the Copyright Office? It includes—that is a complete list?

Witness: With the exception of any assignments.

Mr. Frohlich: The Broadway Music Corporation might have many copyrights prior to 1909; it lasts twenty-eight years and may be renewed for twenty-eight years. You can't go to the Copyright Office and—

Judge Hutchinson: He doesn't have to put out a list of

compositions that nobody is going to use.

[fol. 918] Mr. Frohlich: That is something nobody can tell.

Judge Hutchinson: Objection overruled.

(Thereupon, the said Illustrative List was admitted in evidence, and marked Defendants' Exhibit No. A-2.)

Q. Now, Mr. Richardson, did you prepare another exhibit entitled, "Tabulation Showing Number Of Musical Compositions Copyrighted in 1922 by Publisher Members of ASCAP in 1922"?

A. I did.

Q. Did you personally prepare that?

A. Yes, sir.

Q. What sources did you use?

A. It was necessary for me to consult Blue Book of ASCAP showing the members of ASCAP as of January 1, 1936. On the front page, or the very first two or three pages in this—

Q. (Interrupting) Just a moment. That is supposed to

show the members of ASCAP down to 1936?

A. Correct.

Q. There is a supplement to that book which brings it down to date?

A. Yes, the supplement we used was the photostatic copies submitted in the Nebraska Case.

Q. A supplement to the Blue Book?

A. Yes, sir.

Q. Did you run the records of the Copyright Office to see [fol. 919] how many copyrights were taken out by the present members of ASCAP as shown by those books in the year 1922?

A. No, it wasn't necessary.

Q. Did you consult some official catalogue?

A. I did.

Q. In what way?

A. The United States Copyright Office, each year, puts out an index of all musical copyrights issued for that year. To my understanding, they each month—they put out a volume, approximately each month listing by title—

Q. (Interrupting) That is an official publication put out by the Copyright Office, being a catalogue of the copyrights!

A. Right.

Q. And that is what you consulted?

A. Yes, sir.

Q. Is this (indicating) the exhibit and the results?

A. Yes, it is.

Q. And you personally prepared it in that manner?

A. Yes, I did.

Mr. Ellis: I offer this as our Exhibit No. A-3.

Mr. Frohlich: Objected to on the ground that it is incompetent, immaterial, and irrelevant.

Judge Hutchinson: What is the purpose of this?

Mr. Ellis: To show how many copyrights are controlled by ASCAP.

[fol. 920] Judge Hutchinson: Does that list show the copyrights by other people, too?

Mr. Ellis: Not this list.

Mr. Frohlich: That is my objection, your Honor. If he will come in with all of the copyrights for 1922, I will have no objection. I object to it on that ground.

Judge Hutchinson: Objection overruled.

(Thereupon, the said Tabulation was admitted in evidence, and marked Defendants' Exhibit No. A-3.)

Q. Now, Mr. Richardson, did you prepare in similar fashion a tabulation entitled, "Tabulation Showing Number Of Musical Compositions Copyrighted in 1922 By Publisher Members Of Foreign Societies Having Affiliation Contracts With ASCAP"?

A. I did.

Q. Did you prepare this exhibit (indicating) substantially in the same manner as you did the exhibit about which you have last testified?

A. Yes, sir.

Q. And you personally prepared it?

A. Yes, sir.

Mr. Ellis: We offer this as our Exhibit No. A-4.

Mr. Frohlich: Same objection. Objected to on the ground that it is incompetent, immaterial, and irrelevant.

[fol. 921] Judge Hutchinson: Same ruling. Objection overruled.

(Thereupon, the said Tabulation was admitted in evidence, and marked Defendants' Exhibit No. A-4.)

Mr. Ellis: If your Honor please, that completes the direct examination of this witness—to simply identify those exhibits. I think it might be convenient to put in a certified copy of the Register of Copyrights which shows the number of copyrights registered of music copyrights by years from 1912 to 1939 made by the Register of Copyrights, and with your consent I would like to substitute that copy.

Judge Hutchinson: Very well.

(Thereupon, the said list of copyright registrations was admitted in evidence, and marked Defendants' Exhibit No. A-5.)

Judge Hutchinson: The Court will adjourn until 9:30 tomorrow morning.

(Whereupon, an adjournment was taken until 9:30 o'clock A. M., Tuesday, April 16, 1940.)

[fol. 922] (Whereupon, at 9:30 o'clock A. M., Tuesday, April 16, 1940, the Court convened pursuant to adjournment, all parties present as heretofore, and the following proceedings were had, done, and entered of record, to-wit:)

(Thereupon, the witness, William Burton Richardson, on the stand at the adjournment of Court, resumed the stand for further direct examination.

Direct examination (continued).

By Mr. Ellis:

Q. I hand you again Defendants' Exhibits Nos. A-3 and A-4, being tabulations showing the numbers of musical compositions copyrighted in 1922 by the publisher members of ASCAP and by the foreign affiliates of ASCAP (handing exhibits to witness). Were those prepared on mimeographed lists of the publishers? They appear to be.

A. Yes.

Q. Did you send copies of those same mimeographed lists containing the names of the publishers, but with the spaces for the numbers left blank to any other persons or agencies as a basis for preparing similar information for other years?

A. Yes, I did.

Q. What did you send them?

A. I sent them to Station WIOD in Miami and WFLA [fol. 923] in Tampa, WDAE in Tampa, WMBR in Jacksonville, and there is a station in Orlando, I forget the name of it—WDBO in Orlando.

Q. Those are all designations of radio broadcasting stations?

A. That's correct.

Q. Were those mimeographed lists which you so transmitted identified in any way?

A. Yes, they all have my initials on the copy.

Mr. Ellis: That's all.

Cross-examination.

By Mr. Frohlich:

Q. Who asked you to send those lists to those broad-casting stations?

A. Mr. Andrew W. Bennett.

Q. Did Mr. Benrett retain you to make up these lists?

A. He did.

Q. Can you tell us the first time when you were so re-

A. I think a few days before November 27, 1939.

Q. Did he write you any letters of instructions?

A. No, most of them were verbal.

Q. Did he tell you who you represented?

A. No, not as far as I can recall.

Q. Did he pay you for it?

A. Well, I have got some of it.

Q. Who paid you?

A. Mr. Bennett.

[fol. 924] Q. Did anyone else pay you anything?

A. No, sir.

Q. Did you get any money from Broadcast Music Inc.?

A. No. sir.

Q. Did you ever hear of them?

A. Who was that again?

Q. Broadcast Music Inc.

A. Oh, no.

Q. You have never heard of them?

A. I have heard of them. Yes.

Q. Have you ever been employed by them?

A. Oh, no.

Q. Do you specialize in making up lists from the Copyright Office?

A. No, sir.

Q. This is the first time you have had that kind of work?

A. Yes, that's correct.

Q. Had you known Mr. Bennett before that retainer?

A. No, I hadn't.

Q. How did you get in touch with him or how did he get in touch with you?

A. Well, it was through a mutual friend. Mr. Howard

Callahan.

Q. Is Mr. Callahan connected with any of the broad-

A. Not so far as I know.

Q. Do you represent any broadcaster?

A. No, I don't.

Q. Did you ever?

[fol. 925] A. No. No.

Q. Who assisted you in these compilations?

A. I did the work myself. Of course, I had secretarial help in that respect, but I did all the actual compilations from the Copyright Office myself.

Q. Will you be good enough to look at Defendants' Ex.

hibit No. A-2. Is that the one you have got there?

A. No.

Q. This one (handing exhibit to witness).

A. Yes.

Q. That's the illustrative list containing the information that runs up to price?

A. Yes.

Q. That's the list that should be filed by the Broadway Music Corporation?

A. That's correct.

Q. Will you be good enough to look at that list on Page 1?

A. (complying) All right.

Q. Now, you will find there a composition, "Am I To Blame". Do you see it?

A. Yes.

Q. E-2, that means unpublished, does it?

A. Yes.

Q. That was filed with the Register in 1922?

A. Yes, sir. Correct.

[fol. 926] Q. Now, will you be good enough to look at Page 41

A. (complying) Yes.

Q. "Boo-hoo-hoo You Gonna Cry When I Am Gone," do you see it there?

A. You mean the top one here (indicating) ?

Q. Yes, "Boo-hoo-hoo You Gonna Cry When I Am Gone"?

A. Yes, "Boo-hoo-hoo You Gonna Cry When I Am Gone".

Q. Now, that's a published composition?

A. Yes.

Q. It was published in 1922?

A. That's correct.

Q. It had been unpublished in 1921; there is a notation there, isn't there?

A. No, I haven't got that.

Q. Now, you see the notation of its being published in 1922 on Page 47

A. Yes, sir.

Q. And on that same page you see "Bunch of Happiness"?

Judge Hutchinson: What is the purpose of this?

Mr. Frohlich: I am trying to save time. I want to go down to this exhibit on the compositions that were published or unpublished that were registered in 1922, and I want the witness to testify the number of those compositions from that exhibit.

Judge Hutchinson: Isn't the exhibit in?

Mr. Frohlich: Yes, your Honor, but it will show that this [fol. 927] exhibit made up to represent all of the compositions of the Broadway Music Corporation shows that in 1922 there were filed twenty-six unpublished songs, and thirteen published songs, and of the thirteen published songs nine of them had also been filed as unpublished so there are really only four songs. Now—

Judge Hutchinson: What is the point?

Mr. Frohlich: I am coming to that. There were thirty songs in that year. I have got a compilation up myself,

Judge Hutchinson: What is the point?

Mr. Frohlich: The point is that another exhibit came

Judge Hutchinson: This is an impeachment of his work?
You are showing his work is unreliable?

Mr. Frohlich: Right.

Judge Hutchinson: I don't attach much importance to the exhibit otherwise anyway. Of course, it may be that his testimony is much more important than we see. The only thing I can see of importance to his testimony was to show it was not impossible to comply with the Acts in getting up these compositions and letting somebody know about it. You might say he doesn't prove that because he made some inaccuracy, but he said he only took nineteen hours—well, take twenty hours. You may have proved that it takes more [fol. 928] than nineteen hours to make an accurate calculation.

Mr. Frohlich: I was addressing myself to another element in the case. They have tried to show that we could comply with the Statute, but they have also put in evidence exhibits to show the great amount of copyrights that the members of the Society own as against other publishers, and—

0

Judge Hutchinson: That isn't important either, because you people admit that you do control a large amount. Your last man said he thought you controlled practically all of the worthwhile music, and they told people so. It doesn't make any difference whether it is sixty, ninety, or seventy-five percent. You are pretty good operators, aren't you?

Mr. Frohlich: I think we are.

Judge Hutchinson: So the question of the details isn't important. You could almost submit this case on the facts of the Nebraska Case, but go ahead with it. It isn't important that he should prove precisely that there were 7,841 compositions when there might be 7,839. It makes no difference. But if you can so break him down to show that it is impossible to do what you ought to do, it is all right. All right, suppose he did leave out two or three little songs, or fifteen songs. I don't care. I would be willing to take [fol. 929] that as proof that it was inaccurate, but it is not material whether it is inaccurate or not unless the inaccuracy goes to the point of utterly destroying the truth of that exhibit. I am pretty sure it could be done—we have the records and if we have the records we can get the people to search them down.

Mr. Frohlich: That, I think, I will develop on another witness. In order to save time, can I get concession from Mr. Ellis, that Defendants' Exhibit No. A-2 contains thirty-nine registrations of musical compositions of the Broadway Music Corporation registered in the year 1922 of which number twenty-six were unpublished songs and thirteen published songs nine were registrations that had been filed as unpublished, making a total of thirty actual new songs filed with the Register of Copyrights in 1922.

Mr. Ellis: I concede the totals on the second exhibit. I can explain that by one question to the witness. (two witness) Were renewals included on one of those exhibits there (indicating) and not on the other?

Witness: Yes.

Mr. Frohlich: Can I have the concession subject to checking up?

Judge Hutchinson: Instead of taking it out on the witness check them over yourselves.

Mr. Ellis: I will be glad to do that.

Q. May I have that, Mr. Richardson? [fol. 930] A. Yes (handing exhibit to counsel).

Q. This document that was made up, Defendants' Exhibit A-2, who instructed you to make up the tabulations and columns of this document?

A. I was referred to a copy of the Florida State law in

that respect.

Q. Who referred you to that law?

A. Mr. Bennett.

Q. Did he send you a copy of the law?

A. The copy that I used was part of a brief filed by Mr. Wideman.

Q. Was that the 1937 Statute or the 1939 Statute?

A. I don't know. I would have to see it, Mr. Frohlich.

Q. Suppose I refresh your recollection.

A. It was the one used there in the brief.

Q. I show you now the 1939 Statute, is that the Statute you used (handing paper to witness)?

A. As far as I can tell, I think it was that. Yes.

Q. Now, you are a lawyer and you read this carefully, didn't you?

A. Not carefully.

Q. You did not?

A. No.

Q. You made up the nine columns here didn't you?

A. Yes, sir.

[fol. 931] Q. And you got the information for the nine columns out of the Statute, didn't you?

A. That's correct.

Q. Did you get the information out of any particular section?

A. Yes, I did.

Q. Suppose you look at Section 4-A and tell us whether you got that information out of that Section?

A. No, I didn't.

Q. Well, what other Section did you get it from?

A. I got it from Section 2-A.

Q. 2-A:

A. Yes, that's correct.

Q. Well, now, will you be good enough to point out in Section 2-A where there is a schedule of prices for each performance for profit of each composition?

A. It is not in there; it is in another section pertaining

to that column.

Q. You said you made this up from Section 2-A?

A. Not entirely.

Q. Well, what other section did you use?

A. We are coming to that. This is Section 4-A for the price; that last column.

Q. Was your exhibit intended to be illustrative of com-

pliance with Section 2-A and Section 4-A?

A. That's correct.

Q. Both sections? [fol. 932] A. Yes.

Q. In Section 4-A did you notice the explaination, "* • • at a price established for each separate performance of each such composition"?

A. Yes.

Q. And so when you sat down to make this compilation you intended to make something that would be a complete compliance by the Broadway Music Corporation with Sections 2-A and 4-A?

A. With the exception of the insertion of the price.

Q. With that exception?

A. Yes.

Q. You had the date of the copyrights?

A. Yes, sir.

Q. And the number of the copyright?

A. Yes, sir.

Q. And the name of the composer of the song?

A. Yes, sir.

Q. And the name of the author of the words?

A. Yes, sir.

Q. And the name of the publisher?

A. Yes, sir.

Q. Now, do you find anything on that record as to the owner—the present owner of the performing rights in the song?

A. No, sir.

Q. On your Exhibit A-2 under column eight, name of the present owner of the performing rights, you have BMC? [fol. 933] A. Yes, sir.

Q. That stands for Broadway Music Corporation?

A. Yes, sir.

Q. You made the assumption that the owner of the copyright was the owner of the performing rights?

A. Yes, sir.

Q. Have you had experience as an attorney in copyright matters?

A. Oh, no.

- Q. You never had any?
- A. No.
- Q. Do you know that the Copyright Law splits up various rights in a musical composition?
 - A. I have heard of that.
- Q. Didn't you examine the Copyright Act before you made this compilation?
 - A. No, I did not.
 - Q. Have you ever examined the Copyright Act?
 - A. Yes.
 - Q. How long ago?
- A. Well, in the course of this investigation; merely a cursory examination.
- Q. You don't know that there are several exclusive rights given to the owners of the copyright?
- A. No.
- [fol. 934] Q. You didn't know that the performing rights is only one of the rights given?
 - A. I had no interest in that.
- Q. You don't know there is such a thing as dramatic rights or stage rights in musical works?
 - A. Merely hearsay knowledge.
- Q. Did you intend to include dramatic works as well as the musical composition in that compilation?
 - A. No.
- Q. If Broadway Music Corporation owned a copyright in a dramatic musical work, which might have ten or fifteen musical compositions separately copyrighted, would this compilation show it?
- A. I couldn't be sure about it. I will say this that the copyrights listed there are purely musical; the dramatic rights are listed under a different classification in the Copyright Office.
- Q. Column nine says, schedule of prices for each performance for profit of each composition. I see you have one column for that, haven't you?
 - A. Yes.
- Q. Do you know how many kinds of performances there might be in a musical composition?
 - A. I haven't any idea.
- Q. Have you any idea of the extent of these performances?
 - A. No, I don't.

Q. Do you know that these performances may be had by various users? Hotels, restaurants, cabarets and so forth?

[fol. 935] A. I recognize that to be a fact.

- Q. Don't you know that under the language of that Statute the copyright proprietor would have the right to fix the price of his performance with respect to each of these uses?
 - A. Yes.
- Q. And you don't want us to believe that in that one column a man could set down in that small space all of the uses of this composition?

A. No. No, sir.

Q. If a man wanted to license the use of his performing rights for profit for a composition in the State of Florida under this Statute, wouldn't he be entitled to fix a price for its use in the theatres?

A. I think so.

Judge Hutchinson: That's a question of law. I have read the Statute and it does indicate that he can fix his prices for any use; there is no use asking him that. If you want to ask him something about how his lists conforms to that, you can. I think you are asking him to construe the Statute.

Mr. Frohlich: I think I will develop that with another witness.

Judge Hutchinson: Somebody has testified about four printed pages to print the prices.

Mr. Frohlich: That's right.

- Q. You say you took nineteen and a half hours to [fol. 936] compile that list?
 - A. Yes, sir.
- Q. How long did it take you to compile the other lists that are in evidence?
 - A. Which ones are you referring to?
 - Q. Well, A-4 (handing exhibit to witness)?
- A. Lets see what that is. I think that was—oh, a week or ten days; something like that. You mean to the end of the notations?
 - Q. The entire list?
- A. Oh, I would say two weeks or a little more than two weeks.

Q. When Mr. Bennett asked you to make up this compilation with respect to Broadway Music Corporation, did he specifically mention Broadway Music Corporation?

A. He did.

Q. Did he mention any other members of ASCAP?

A. No, he didn't.

Q. He said he just wanted a list of Broadway Music Corporation?

A. Yes, sir.

Q. You know that Broadway Music Corporation is one of the smallest companies, don't you?

A. No, I couldn't say whether it was small or big.

Q. You didn't know anything about Broadway Music Corporation?

A. No, I didn't.

Q. Did you make any other lists in compliance with the 1939 Statute in addition to those that are in evidence? [fol. 937] A. No, I haven't.

Mr. Frohlich: That's all.

(Witness excused.)

Thereupon, to further maintain the issues on their behalf, the defendants produced as a witness one Russell S. Jones who, being first duly sworn, testified as follows:

Direct examination.

By Mr. Ellis:

Q. State your name and place of residence?

A. Rursell S. Jones, 311 NE 79th Street, Miami, Florida.

Q. Wha, is your occupation, Mr. Jones?

A. I am employed by Radio Station WIOD as an an-

nouncer, utility man, and production man.

Q. Did you prepare some exhibits showing for some year the number of copyrighted musical compositions held by the Society—the members of the Society known as ASCAP?

A. Yes, I did for the year 1933.

Q. Did you prepare a similar exhibit showing such copyrights held by the Societies in foreign countries affiliated with ASCAP?

A. I did for the same year; 1933.

Q. How did you prepare those exhibits? From what

sources? State very briefly?

A. From a catalogue—a make up catalogue from the United States Copyright Office.

[fol. 938] Q. That is an index of the copyrights and list

of the copyright holders?

A. A catalogue prepared by the Copyright Office.

Q. These are the exhibits you prepared (indicating)?

A. They are; those are the exhibits.

Mr. Ellis: We offer these exhibits in evidence.

Mr. Frolich: Object to them on the ground that they are incompetent, irrelevant, and immaterial, and not within the issues in this case. They are supposed to represent extracts from official documents—the Copyright Office Bulletin with respect to musical compositions. I don't think is is necessary to encumber the record. The document is available and could have been produced here. I don't think it is within the issues, and has no bearing upon the points we are interested in in this case.

Judge Hutchinson: What is the purpose of it?

Mr. Ellis: To show the number of copyrights held by the members of ASCAP for the year 1933.

Judge Hutchinson: How is that material?

Mr. Ellis: It simply bears upon the extent of the control over the music business held by ASCAP. It is not of great

weight, but it adds to the evidence.

Judge Hutchinson: On that point, it doesn't seem to me that there is any real conflict between you. Do you [fol. 939] contend that ASCAP owns or controls the greater portion of the business of the usable musical compositions?

Mr. Frohlich: I don't.

Judge Hutchinson: Your witness testified to that.

Mr. Frohlich: No, he didn't, your Honor; it was limited

to a very fine catalogue of popular music.

Judge Hutchinson: What I am trying to get at is, why do we dispute over something that is not in dispute. You claim ASCAP really has control of very little music, do you? The music they have to do with is negligible?

Mr. Frohlich: I didn't say that, your Honor. ASCAP has an excellent repertoire of popular music.

Judge Hutchinson: It has a very complete and thorough repertoire of usable, popular music?

Mr. Frohlich: It has.

Judge Hutchinson: And outside of its repertoire there is very little music used and played which has popular use?

Mr. Frohlich: That, I will not admit, because I can prove—

Judge Hutchinson: All right, I just wanted to see what you are contesting. Then, you say outside of ASCAP's

music there is a good deal of other music.

Mr. Frohlich: Yes, sir.

[fol. 940] Judge Hutchinson: Is that so, Mr. Ellis?
Mr. Ellis: It is a difference in degree, your Honor.

Judge Hutchinson: You don't claim that ASCAP controls every piece of music, do you?

Mr. Ellis: No, your Honor.

Judge Hutchinson: But you do know that ASCAP controls a whole lot of it?

Mr. Ellis: If Mr. Frohlich will agree that ASCAP controls possibly fifty percent of the usable music—perform-

ing rights to it—

Mr. Boggs: I want to make one comment. Mr. Mills testified about twenty-five thousand pieces of copyrighted music each year, and that only twenty-five hundred or three thousand pieces of that belonged to ASCAP. His statement stands in the record, and this contradicts Mr. Mills'

testimony.

Judge Hutchinson: What you are saying—you are over-throwing Mr. Mills' testimony. He had a list of one hundred thousand compositions, a good deal of which was in the public domain, and he could not say what proportion of the music which was not public domain—what proportion of that one hundred thousand was public domain music. He said of the one hundred thousand he had—ASCAP had twenty percent. Do you think if they can bring this case down' to a question of whether they have got majority control—is that all that this case stands on? Suppose they had twenty-five percent, they would be a [fol. 941] combination, wouldn't they? In Texas if two or more persons combine to fix a price any article it is a trust and combination. Of course, it may be in Florida that you have got to have fifty-one percent.

Mr. Boggs: Under the 1937 Act a substantial showing is required, but under the 1939 Act, on this price fixing

thing, it is two or more.

Judge Hutchinson: What are we under, the 1937 or 1939

Mr. Boggs: We are under both.

Judge Hutchinson: Is this proof going under Section 11
Mr. Boggs: Yes, your Honor. ASCAP certainly controls
a substantial number.

Mr. Frohlich: That's admitted, your Honor.

Judge Hutchinson: You certainly do control a substantial number or it is a fraud on the public and on this Court for you to be in existence, isn't that it?

Mr. Frohlich: Yes, your Honor.

Judge Hutchinson: Then, what are we fighting for! Let us go ahead and not tie knots here. You are objecting on the grounds that it is not material to the issues in this case!

Mr. Frohlich: Yes.

Judge Hutchinson: Why?

[fol. 942] Mr. Frohlich: It regards something that is not in issue here. We agree that ASCAP has a substantial number of copyrights. Why do we have to encumber the record to show the number of copyrights of ASCAP? You can fill this Ccurt Room up with copyrights from the Copy-

right Office.

Mr. Ellis: It is one of the defenses interposed by the defendants in this case. Regardless of either one of these Florida Statutes ASCAP is coming into equity with unclean hands and is asking for the aid of a Court in equity in perpetuating its price fixing activities, and we say because of that fact they are not entitled to perpetuate this monopolistic control that they have over the entertainment industry. You are not depending on a Statute at all—you come back to common law principles of public policy and when the proper time comes we have a number of cases showing that the Court frowns on rendering aid to monopolistic combines, and it seems to me that under that sort of defense this evidence is relevant and pertinent.

Judge Hutchinson: In the Nebraska Case, the Court declined to consider whether these contracts were valid. You said that the Nebraska Case controls, and if your Statute is valid your Statute would control, and even if your Statute is not valid you have a right to justice upon the [fol. 943] grounds that they are engaged in something which is monopolistic and contrary to the common law, and,

therefore, can't appeal in equity.

Mr. Ellis: Yes, sir.

Judgé Hutchinson: But still if you haven't got a Statute, they are entitled to an injunction.

Mr. Ellis: It is price fixing, your Honor.

Judge Hutchinson: It would be an extreme view to say, "We are going to let an unconstitutional statute be enforced against them because it is wrong". What they ask the aid of the Court for is not to enforce a contract. This is not a suit between persons. Now, if you think you have got a broadcasters' suit, we will hear that view. It may be that the broadcasters can contest the enforcement of this contract on the grounds you put up—that they have gone into a contract which is tainted, but that is not this suit. Here are the officials of the State of Florida undertaking to use the power of the State against these people, and you come into Court and say, "Stand aside; they are a pretty rough set of fellows". So far as I am concerned, I would never listen to that plea. They may be rough, but you are roughing them. You are attempting to illegally use the power of the State to oppress people. I am not saving we shouldn't go into that inquiry, but if this Statute is valid we ought to refuse the injunction. If this Statute [fol. 944] is not valid we ought to grant it.

Mr. Ellis: Aren't there numerous types of contracts not a part of any statute enforcement of which have been

refused?

Judge Hutchinson: This is not an enforcement.

Mr. Ellis: ASCAP has gone into Court to declare illegal and void the contracts it now has with the entertainment industries in Florida—

Judge Hutchinson: It is asking the Court to stay the hand of the State in exacting penalties against these people for trying to go on with their business.

Mr. Ellis: You will notice one of the clauses—they want the State enjoined from interfering with these contracts.

Judge Hutchinson: At any rate, I suggest authority. I have never seen it. However, if this Statute is invalid, I am not going to refuse these people relief. If you are interested enough in the thing to say we are wrong in keeping the evidence out—if you want us to consult on a ruling, all right. Don't misunderstand me, I am not saying that the attitude of these people in charging monopoly, which is restraint in trade, might not have some conscious or unconscious influence in determining the question of unconstitutionality or illegality. I am not saying it doesn't [fol. 945] have some influence in the case, but if we have a

clear conviction that this Statute is unconstitutional and invalid, then, we ought not to refuse the injunction. So far as the evidence has come out, there is no indication that anybody is very badly hurt or injured. It is just a row between the broadcasters and them. It is not such a question of public policy so as to make a Chancellor say, "We are going to kick these people out". Now, how much time do you want to bring in proof? I think you have got a case that ASCAP controls the majority of the business.

Mr. Boggs: I would be perfectly willing to let your Honor's ruling stand on that, and on this law proposition

we will present it properly in our brief.

Judge Hutchinson: If you have only got one or two exhibits on which this point relates, it might be better for us to overrule the objection and take it subject to the objection and let it go in, and to have it in the form of a separate bill of exceptions. This case is going to settle down, and the issue in the case is going to be the precise number of publications which ASCAP holds and the precise proportion which those bear to others. So far as I am concerned, I will give you a bill on it now.

Mr. Ellis: We have got in addition to this witness four other witnesses of like character, and your Honor will [fol. 946] notice that that part of Mr. Richardson's testimony was very brief, and I should think, possibly, Mr. Frohlich on seeing these other exhibits would be willing to

stipulate.

Judge Hutchinson: Give the reporter the names of the witnesses and the compilations and it will be in. Objection of the plaintiff overruled.

Stipulation

It is stipulated that the witnesses Jones, Meadows, More, and Sparks would testify that the publisher members of ASCAP and the foreign affiliates of ASCAP were granted copyrights—that is, the present members of the Society and the affiliates were granted copyrights to musical compositions in certain years in the following numbers:

For the year 1933, ASCAP members, 5,174 Foreign affiliates, 3,345

Total, 8,519.

That the total copyrights for 1933 were 25,992, of which 14,796 were unpublished.

For the year 1920, ASCAP members, 7,167

Foreign affiliates, 4,205

Total, 11,372

Total of unpublished copyrights taken out in that year, 31,614.

For the year 1916, ASCAP members, 7,438

Foreign affiliates, 3,496 [fol. 947] Total, 10,934.

Total of all of the copyrights 19,973.

For the year 1913, ASCAP members, 7,009.

Foreign affiliates, 6,819.

All of the said testimony being admitted over the objections of the plaintiffs as to materiality and competency.

(Witness Excused.)

Mr. Frohlich: May I hand up to your Honors the brief we prepared and used in the Supreme Court. On Page forty-six you will find what your Honor just stated as a rule of law.

Judge Hutchinson: I am very glad I have got support. (laughter.)

Mr. Ellis: There are two witnesses I would like to put on—we simply want to remove all possible doubt of the control of ASCAP. I am only going to ask this witness two or three questions after qualifying him. He will testify briefly to that control and also briefly with reference to the mode in which it is exercised.

Judge Hutchinson: All right, that is permissible. However, bear in mind that this is not a case tried before a jury where some particular fact may have dynamic potentialities. It makes little difference to me as regards—well, "Oh, Molly, Come Home to Me." However, we don't mean to say that we shouldn't hear what kind of a business it is.

[fol. 948] Thereupon, to further maintain the issues on their behalf, the defendants produced as a witness one Louis Thomas Belviso, who, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Ellis:

Q. State your name and place of residence, please, sir.
A. Louis Thomas Belviso, Jackson Heights, New York.

Q. State what position you hold in the radio broadcasting industry?

A. I have the position of Manager of the Music Division of the National Broadcasting Corporation.

Q. How long have you been with NRC?

A. Ten years.

Q. And have you been in charge of its Music Department

during all of that time?

A. Well, I started out in charge of the program building section, which is called Music Supervision, and, then, gradually we took on other musical activities, and now it is all included in the music division.

Q. State briefly, Mr. Belviso, your education and your

experience in the music industry?

- A. Well, I was educated at the Yale School of Music, Yale College, and the Institute of Musical Art in New York. I-have been directing orchestras of all types since I was fourteen. I started out in the business of building and sell-[fol. 949] ing orchestras to hotels and night clubs. From there I went to the Olymphia Theatres, Inc., a group of thirty theatres which was later taken over by Paramount, and with whom I held the same position only there were many more theatres, from thirty to one hundred; I built stage shows and selected music for motion-pictures.
- Q. Have you personally composed musical compositions, and, if so, indicate generally the number?

A. I have composed thousands of incidental bits of music for motion pictures and radio shows.

Q. From your knowledge of the availability of music, can you state who controls the performing rights to the substantial majority of the usable copyrighted music available for public performances for profit in the United States?

A. Yes.

Q. Who controls it?

A. ASCAP.

Mr. Frohlich: Just a moment. I object to that on the ground that the witness hasn't shown himself qualified that he knows of his own knowledge who controls the great majority of available music.

Mr. Ellis: I can qualify him further. He is in charge of all of the programs of NBC-his salary is fifty thousand

dollars per year for that purpose.

Judge Hutchinson: What did you say you do with regard to broadcasting programs?

[fol. 950] Witness: I have charge of the Music Division. This has to do in New York with the building of programs and with—

Judge Hutchinson: What programs?

Witness: For NBC.

Judge Hutchinson: Does NBC limit itself to one field and Columbia and the others in the course of a year use the same compositions?

Witness: I would say we used the same compositions, in

a general way.

Judge Hutchinson: Your use is not limited to a particular field of music but includes the whole range?

Witness: Yes.

Judge Hutchinson: Your broadcasting company uses about the same pieces as the others?

Witness: I would say so.

Judge Hutchinson: You couldn't know any more about music or have any more opportunity to know who controls it if you represented two broadcasting companies than if you represented one?

Witness: No.

Judge Hutchinson: I think he is qualified. Objection overruled.

Q. Is there available, at the present time, socalled popular music of some appeal and sufficient quality and quantity to operate programs for commercial broadcasting other [fol. 951] than the music controlled by ASCAP?

A. No.

Q. Mr. Belviso, you have something to do with what is called the clearing of copyrighted musical material for the broadcasting company, don't you?

A. Yes, I do. All of the music used by NBC is submitted

to my department for music clearance.

Q. Is that just for the United States or for all opera-

A. We determine whether we are licensed to use the music in the United States, and if the program goes to Canada or some other foreign country, if we are involved in a foreign broadcast, we look into the foreign rights.

Q. In preparing musical programs for NBC is it a part of your duties to arrange the right to give public perform-

ances over the radio of copyrighted musical compositions!

A. It is.

Q. You arrange for them through ASCAP and from your other sources?

A. With ASCAP, we have a blanket arrangement.

Q. Are there instances in which you negotiate for and obtain the right to use such material directly with the individual copyright holders?

A. Yes, quite a number.

Q. And is the price or fee that you pay fixed on a per piece or per use basis?

A. Yes.

[fol. 952] Q. Is it fixed for one performance or two or three performances, or any such number as that?

A. Usually, on the ones we have no license for, I make a

direct negotiation for a fee.

Q. Those are what you call individual licenses from the

individual copyright holders?

A. Yes, usually for a single performance, although, we have a number of private licenses with small publishers for thirty days or so.

Q. And how many of those private licenses does NBC have?

A. Well, I would say six or seven thousand.

Q. Those permit the company to use the material on a

per use of per piece basis?

A. These private licenses, if I understood you correctly, are usually blanket licenses passed on to NBC from small publishers or small composers interested in getting his works on the air. Now, as to what you asked me with regard to a single negotiation, we have many negotiations for one performance as a fee.

Judge Hutchinson: I couldn't hear that. What was the question?

Mr. Ellis: Read the question, please. (Question read by reporter.)

Witness: That refers to the miscellaneous items that come up from time to time for which we don't have any blanket license.

[fol. 953] Judge Hutchinson: But the general system is by blanket licenses—not only with ASCAP but with others?

Witness: Yes.

Q. Is there any difficulty in fixing the price of compensation for the per use or per piece arrangement for using such copyrighted music?

A. Usually not.

Q. How long does it usually take?

A. Oh, in most cases merely a telephone call.

Q. Roughly what range do the fees or compensation take?

A. Non-dramatic music?

Q. Yes.

A. They range from five dollars up to five or six or nine. I don't know how they arrive at it; twelve, twenty-two, twenty-five, one hundred.

Judge Hutchinson: How do you find out the owner of the

piece?

Witness: Through years of contact we get to know who represent certain pieces.

Q. How do you know he is going to be in when you call

him?

A. Well, we don't know as a matter of fact. There is one fellow, for instance, I never call before eleven thirty in the morning, because he never gets up before then, and, then, he goes out to lunch at twelve thirty and doesn't come back until four (laughter).

Judge Hutchinson: You don't wait until the programs

go on the air to get your license, do you?

[fol. 954] Witness: No. before.

Judge Hutchinson: The general way is by a blanket license—then you know what you can do?

Witness: That's right. If there isn't a blanket license and we are unable to contact the holder of the copyrights one of those items comes off.

Judge Hutchinson: That is an exception to the rule? Witness: Right.

Q. You referred to a private license, blanket license, Mr. Belviso, do you mean a license from one individual copyright holder for a number of compositions, but not the kind of a license which is meant to cover an arrangement by a combination or a group for a number of copyright holders?

A. No, in these private licenses, they are usually with one individual who might have one composition, or with one pub-

lishing house.

Mr. Ellis: Your witness.

Cross-examination.

By Mr. Frohlich:

Q. Mr. Belviso, you don't want this Court to believe that you can't conduct the business of broadcasting just as economically and as well by means of private licenses on a per use or per program basis as you conduct it now with a blanket license?

A. I didn't say that.

Q. You don't want the Court to believe any such thing!

A. No.

[fol. 955] Q. You didn't even say that?

A. Right.

Q. Does NBC have licenses with the European Societies!

A. Yes.

Q. With SESAC?

A. Right.

Q. How many years have you had a license with that outfit?

A. With SESAC we have recently renewed our license in February; it is on the sixth year.

Q. That's also a blanket license?

A. Right.

Q. And this SESAC controls a great many foreign compositions?

A. A number. Yes.

Q. A number of foreign and American compositions?

A. Yes, sir.

Q. It has quite an extensive catalogue, hasn't it?

A. Fairly,

Q. Do they represent several copyright owners—SESACt

A. They represent a number of publishers who are copyright owners, I would say.

Judge Hutchinson: In brief, is SESAC a competitor of ASCAP?

Witness: Well, it is in the same business.

Q. But SESAC also has an extensive catalogue?

A. Well, fairly. Its catalogue is not as extensive as ASCAP's.

Q. And SESAC is a competitor of ASCAP, isn't it? [fol. 956] I wouldn't know just how to answer that.

Judge Hutchinson: The witness may be confused. He may have an idea that SESAC and ASCAP are working

together. Maybe they have got a secret arrangement. They have a list of music which they sell a blanket license for just

like ASCAP, haven't they?

Witness: Yes. They are both licensing organizations representing a number of publishers. The essential difference is in quality, and, as I say, the type of contract. The SESAC contracts, at least ours is, is a blanket network contract, and the ASCAP contract is a station contract.

Q. Who is Associated Music Publishers?

A. They are still another licensing organization representing some fifteen odd foreign publishers.

Q. Have they many titles?

A. Well, they have a lot of titles and a lot of public domain music.

Q. And a lot of copyrighted stuff?

A. I would say comparatively little.

Judge Hutchinson: These associations, you say, have a lot of public domain music. How can they sell public domain music?

Witness: They have the copies of the music available. We have a license with them to perform any copyrighted music that they have.

[fol. 957] Judge Hutchinson: What do they do with regard to public domain music? Do they sell the sheet music?

Witness: Yes, they act as agents for the sale of it.

Judge Hutchinson: That doesn't come under the license! Witness: No, sir.

- Q. Have you also a license for G. Ricordi of Milan?
- A. We have.
- Q. Is that a large publishing concern?
- A. Yes, quite a large publishing house.

Q. It controls many thousands of compositions?

- A. I would say it has quite a few thousand compositions, and quite a large public domain catalogue.
 - Q. That, of course, includes Verdi, Mascagni, and Puccini.
- A. Well, everything of Verdi's is public domain except "Falstaff".
- Q. If you want to play Verdi you have got to get a license from Ricordi?
- A. No, not Verdi. With the exception of "Falstaff" everything of Verdi's is in the public domain.

Q. Well, if you wanted to play an arrangement of Verdi owned by Ricordi?

A. Not necessarily.

Q. How about Mascagni and Puccini?

A. Well, it all depends on what you mean by Mascagni. If it is "Osiris" or "Cavalleria Rusticina" that would be in the public domain.

Q. Do you pay them an annual sum for that license?

[fol. 958] A. Yes, sir.

Q. Have you a blanket license from any other concern?

A. Well, we have a blanket network license with the Jewish Society, A. P. Smith, E. P. Sherman, in addition to SESAC and ASCAP.

Q. Do these societies control a great many compositions!

A. Some.

Q. You dip into them, without any formality, whenever you want anything of theirs. There is no contacting and negotiating for a license, is there?

A. Well, it is not quite as simple as that in the case of

Ricordi.

Q. You do two kinds of broadcasting, don't you? You broadcast "small" rights and "grand" rights, don't you?

A. By that do you mean non-dramatic and dramatic!

Q. Yes?

A. We do.

Q. If you put on for one hour an opera of Puccini's, and you took seven or eight of his great arias and put them together, that would be a dramatic performance?

A. Yes, sir.

Q. And you would have to get such a dramatic license from G. Ricordi of Milan, wouldn't you?

A. Yes, sir.

Q. If you played one song of Puccini's you might be using an arrangement owned by somebody else?

A. That would be Ricordi controlled.

- Q. In other words, they have all of the Puccini? [fol. 959] A. Well, there is the Rondine.
- Q. When, you perform in non-dramatic form you are not required to negotiate for that particular song?

A. That's correct.

Q. Do you find that convenient in your business?

A. Well, it is convenient.

Q. As a matter of fact, you frequently go to the great catalogues for compositions?

A. I don't quite understand you.

Q. Well, suppose you wanted to perform one of the old masters—a Mozart number?

Judge Hutchinson: Is that really relevant? He stated very broadly that he does business on a blanket license.

Mr. Frohlich: I want to show your Honors he can still go safely beyond ASCAP.

Judge Hutchinson: He already said that.

Mr. Ellis: We admit that.

Mr. Frohlich: Will he stipulate that there is a vast reservoir of fine music—

Judge Hutchinson: Not vast.

Mr. Frohlich: A vast reservoir of fine music of the masters to which NBC and other radio stations help themselves, and to which they do help themselves very frequently.

Mr. Ellis: We will admit that, but I think you should admit that much of it is only occasionally usable.

[fol. 969] Mr. Frohlich: We will not admit that.

Judge Hutchinson: I think the witness just testified to that—if you will admit there is a reservoir there.

Mr. Ellis: We admit it.

Mr. Frohlich: I have no more questions.

(Witness excused.)

Judge Hutchinson: There will be a ten minute recess.

(After Recess.)

Thereupon, to further maintain the issues on their. behalf, the defendants produced as a witness one James W. Baldwin who, being first duly sworn, testified as follows:

Direct examination.

By Mr. Ellis:

- Q. You are Mr. James W. Baldwin?
- A. Yes, sir.
- Q. Where do you live, Mr. Baldwin?
- A. 201 Lincoln Street, Baltimore, Maryland.

Q. Have you held some position with the National Association of Broadcasters, and, if so, state what your connection was?

A. I became associated with them first in 1933, first, in the capacity of assistant to the Managing Director, and in July, 1935, I was appointed managing director of the Association, and I held that position until February, 1938.

Q. Have you also owned and operated commercial broad-

[fol. 961] casting stations?

A. As a major stockholder of a corporation, yes.

Q. While you were managing director of the National Association of Broadcasters, did you have any negotiations or discussions with representatives of the American Society of Composers, Authors, and Publishers concerning the right—the licensing of the right to public performance for profit of the musical compositions controlled by the Society?

A. Yes.

Q. When did you have those discussions and how did you happen to have them? State very briefly how they

proceeded and what the nature of them was?

A. As Managing Director, I was under mandate from our member stations and from my Board of Directors, to whom I was directly responsible, for trying to negotiate with the Society a per piece or measure system or plan. Those mandates were in the form of resolutions which had been adopted in conferences, and also in the form of specific instructions from my Board of Directors. The licenses between the Society and the stations were expiring on December 31, 1935, so my conversations with the officers of the Society began, I believe, in August, 1935, and continued through the remaining months of 1935 up to about January 11, 1936.

Q. With whom did you have those discussions as repre-

sentatives of ASCAP?

A. Well, I talked to their General Manager, Mr. Mills, [fol. 962] and perhaps, Mr. Buck, and their general counsel, Mr. Burkan, and on one of these occasions, in company with our president, I appeared before their full board.

Q. Can you state or indicate the reason you took up those negotiations so far as the position of the broadcasters is concerned? What was the purpose of them? In other words, in addition to the proposals of a per piece or measured service basis, were they satisfied or dissatisfied with the prices?

A. It was not so much a matter of price; in our discussions we never knew whether we were paying too much or too little. The criticism was with a system which required our member stations to pay a percentage of their gross receipts whether they used the Societies music or whether they didn't. They also found criticism with the fact while that was generally true there were some instances where that was not so, and those instances created what our members thought were discriminations. For instance, the socalled newspaper form of contract. It was generally agreed, I think, between our people and the spokesman for the Society in those crucial days of December, 1935, that the details incidental to the operation of a per piece system were so complicated that they couldn't be worked out in the few days that remained before January 1, 1936.

Q. What was the result of your negotiations? Did you

get together on any facts?

A. First, we obtained an extension beyond December 31st for a definite period but subject to cancellation on two [fol. 963] days' notice, and in that period of time, it was known to all, to both sides, that the advisory committee which had assembled in New York, by authority of the board, was to work out details for a plan. We were working on that plan and endeavoring in our conversations with the members of the Society to, at least, if we couldn't put in the per piece system to get the kind of system that others had, which required time. As of about January 10th when we had completed our first draft, without notice to us, and notwithstanding the extension which had been granted, and notwithstanding that for the first time we had met the complaint that the Association had not the right to bind its members, more than three hundred stations gave their power of attorney to me to negotiate for music licenses. That information was given to members of the Society, and notwithstanding that power to negotiate, and notwithstanding our-

Judge Hutchinson: Go ahead and state what happened. Witness: Our members received notice that they must sign a five year extension of the then existing licenses by January 15th or thereafter be considered infringers.

Q. Those are the contracts that you are now operating under?

A. Yes, sir.

Q. From your knowledge of the broadcasting industry, and the mode of operation of the Society known as ASCAP, are you able to say whether the price or rates for the use of their material is fixed by what you call free and open [fol. 964] negotiations or trading, or in some other manner? Mr. Frohlich: Object to that; the facts speak for them-

selves.

Judge Hutchinson: That question calls for a conclusion. I don't know exactly what you mean by that.

Mr. Ellis: I asked him whether in making those prices they negotiated in a fair and open manner.

Q. Now, in negotiating for those licenses or arranging for them, are there negotiations entered into by ASCAP! A. There have been negotiations, I believe, from the

beginning.

Judge Hutchinson: I don't understand the answer.

Witness: There have been negotiations from the beginning between the broadcasters, representatives of the broadcasters, and the Society.

Q. How are the prices and terms fixed?

A. By the Society.

Mr. Ellis: That's all.

Cross-examination.

By Mr. Frohlich:

Q. Mr. Baldwin, you had negotiations in 1935 with Mr. Mills, didn't you?

A. I talked with Mr. Mills and with Mr. Buck.

Q. Did you then discuss the terms of the proposed new contract?

A. No terms of any contract was discussed.

Q. Well, what was talked about?

A. Trying to eradicate differences, and get one contract [fol. 965] for all so that all paid the same.

Q. Didn't you know at that time that the newspaper owned stations were negotiating for the kind of a contract you just testified to before?

A. My understanding was that the newspapers had al-

ready renewed their contracts early in 1935.

Q. They had made their contracts in 1932, hadn't they?

A. Right.

- Q. And the National Association of Broadcasters had negotiated their contracts in 1932?
- A. A committee had.
- Q. And the National Association of Broadcasters was aware in the year 1932 that the Society was giving newspaper owned broadcasters this kind of a contract.

A. I don't know.

Q. Weren't you told that by Mr./Mills in 1935?

A. My understanding-

Q. Were you not told that by Mr. Mills in 1935?

A. I don't know which was first, the negotiation for the

newspaper form or the general form of contract.

Q. Didn't you know in 1935 that the Society was negotiating with newspaper owned broadcasting stations at that time?

A. I knew the newspapers had a special form.

Q. Do you know the reason for that special form?

A. No. sir.

[fol. 966] Q. Did you ever, by yourself, talk with any newspaper owned station in order to find out the reason for it?

A. No. sir.

Q. Do you think the American Society of Composers, Authors and Publishers is a good thing for your broadcasting business?

A. I didn't understand the

Mr. Frohlich: Read the question. (Question read by reporter.)

Witness: I think it could be.

Q. Do you remember testifying before the Patents' Committee in Washington in 1936?

A. Yes.

Q. Do you remember the following questions and the following answers? The Chairman is saying this.

"The Chairman: Would you be in favor of passing legislation that would be instrumental in destroying ASCAP?

And you'answered:

"Mr. Baldwin: No, sir.

"The Chairman: You think ASCAP is a necessity to protect the very interests that you represent?

"Mr. Baldwin: Some central agency. Whether it is the ASCAP or some other, I am not interested.

"The Chairman: Is it absolutely essential for you to deal with some agency? In other words, It is very essential for you to deal with one organization rather than to deal with a group of 1,000 individuals?

[fol. 967] "Mr. Baldwin: It is more convenient, sir.

"The Chairman: You would be sued for infringements every day, if you dealt with individuals. It not that right?

"Mr. Baldwin: We might be.

"The Chairman: But it is easier to deal with one centralized organization?

"Mr. Baldwin: We think it is without a doubt."

Now, were those questions asked you and those answers given?

A. I believe that is true.

Q. Did you ever formulate a per piece system on behalf of the broadcasters?

A. No, we didn't think we should.

Q. Didn't Mr. Mills ask you to present him with a per piece system formula?

A. Yes.

Q. Did you give it to him?

- A. No. May I explain that? That's the thing we were preparing to do in January—
 - Q. (interrupting:) Why didn't you-

Judge Long: Let him explain his anwer.

Judge Hutchinson: I don't think he has a right to inject it on cross examination.

Q. You may explain.

A. I answered the question no, and I infended to explain that we were endeavoring to work out a formula in January, 1936, when the notice made further negotiations impossible. [fol. 968] Q. When for the first time did you and Mr. Mills discuss this formula?

A. Well, I expect Mr. Mills and I have discussed the general problems since the first day we met after I was Manag-

ing Director of the Association.

Q. When was that?

A. I have stated at a meeting, I believe, in August, 1935.

Q. Had Mr. Mills in August, 1935, asked you to prepare a formula?

A. I can't say whether it was at the first meeting.

Q. Can you give us the approximate month it came up?

A. I know it was discussed during November and December, 1935.

Q. Had that per piece system been discussed by the board of the National Association of Broadcasters?

A. Often.

Q. Had they at any time prior to August, to your knowledge, presented a per piece plan to ASCAP?

A. Not a plan.

- Q. Or a formula?
- A. Nor a formula.
- Q. You know, don't you, that if you were working on a per piece or program basis you would have to send in daily reports of the compositions which you used?

A. Periodically anyway.

Q. If you were paying so much for every performance of every musical composition there would have to be some [fol. 969] method by which you made payment?

A. That's right.

Q. Do you think that is a good thing for the broadcasting business?

A. Yes.

Q. You do?

A. Yes.

Q. Do you remember a report you made on February 3, 1936, to the National Association of Broadcasters?

A. To my Board of Directors?

Q. Yes?

A. Yes.

Q. Do you remember this line on Page 48 of that report? "Records and Reports. Under this heading the revised contract still calls for weekly reports of all compositions including those rat controlled by licensor. This feature is objectionable." Do you remember that statement?

A. No, I don't. If you have it there I can check it up.

Q. Will you please look at this document and see if that is an accurate copy of your report (handing paper to witness)?

A. I recall it. It was connected with the Warner

Q. (Interrupting:) Did Warner Brothers and the companies owned and controlled by them completely withdraw from ASCAP?

A. Yes.

"The Chairman: Is it absolutely essential for you to deal with some agency? In other words, It is very essential for you to deal with one organization rather than to deal with a group of 1,000 individuals?

[fol. 967] "Mr. Baldwin: It is more convenient, sir.

"The Chairman: You would be sued for infringements every day, if you dealt with individuals. Is not that right? "Mr. Baldwin: We might be.

"The Chairman: But it is easier to deal with one centralized organization?

"Mr. Baldwin: We think it is without a doubt."

Now, were those questions asked you and those answers given?

A. I believe that is true.

Q. Did you ever formulate a per piece system on behalf of the broadcasters?

A. No, we didn't think we should.

Q. Didn't Mr. Mills ask you to present him with a per piece system formula?

A. Yes.

Q. Did you give it to him?

A. No. May I explain that? That's the thing we were preparing to do in January—

Q. (interrupting:) Why didn't you-

Judge Long: Let him explain his anwer.

Judge Hutchinson: I don't think he has a right to inject it on cross examination.

Q. You may explain.

A. I answered the question no, and I intended to explain that we were endeavoring to work out a formula in January, 1936, when the notice made further negotiations impossible. [fol. 968] Q. When for the first time did you and Mr. Mills discuss this formula?

A. Well, I expect Mr. Mills and I have discussed the general problems since the first day we met after I was Managing Director of the Association.

Q. When was that?

A. I have stated at a meeting, I believe, in August, 1935.

Q. Had Mr. Mills in August, 1935, asked you to prepare a formula?

A. I can't say whether it was at the first meeting.

Q. Can you give us the approximate month it came up!

A. I know it was discussed during November and December, 1935.

Q. Had that per piece system been discussed by the board

of the National Association of Broadcasters?

A. Often.

Q. Had they at any time prior to August, to your knowledge, presented a per piece plan to ASCAP?

A. Not a plan.

Q. Or a formula?

A. Nor a formula.

Q. You know, don't you, that if you were working on a per piece or program basis you would have to send in daily reports of the compositions which you used?

A. Periodically anyway.

Q. If you were paying so much for every performance of every musical composition there would have to be some [fol. 969] method by which you made payment?

A. That's right.

Q. Do you think that is a good thing for the broadcasting business?

A. Yes.

Q. You do?

A. Yes.

Q. Do you remember a report you made on February 3, 1936, to the National Association of Broadcasters?

A. To my Board of Directors?

Q. Yes?

A. Yes.

Q. Do you remember this line on Page 48 of that report? "Records and Reports. Under this heading the revised contract still calls for weekly reports of all compositions including those not controlled by licensor. This feature is objectionable." Do you remember that statement?

A. No, I don't. If you have it there I can check it up.

Q. Will you please look at this document and see if that is an accurate copy of your report (handing paper to witness)?

A. I recall it. It was connected with the Warner Brothers—

Q. (Interrupting:) Did Warner Brothers and the companies owned and controlled by them completely withdraw from ASCAP?

A. Yes.

Q. For how long? For about six months?

A. Yes, sir.

[fol. 970] Q. And, then, you on behalf of the broadcasters were negotiating for a license from Warner Brothers?

A. Yes.

Q. For a per piece system?

A. Yes.

- Q. And were you able to work out a per piece system with them?
 - A. No.
- Q. About what percentage of the programs of the broadcasters use music?

A. I have forgotten, Mr. Frohlich.

- Q. Suppose you refresh your recollection. Would it be correct to say about seventy per cent of the programs use music?
- A. I should say that would be nearly correct. Sixty or seventy per cent.

Q. Is that true today as well as it was in 1935?

- A. I don't believe there has been any substantial change since 1935.
- Q. But there has been an increase in the gross volume of business done by the broadcasters since 1935, hasn't there?

A. Yes.

Q. Do you recall without any figures about what the NBC took in for time on the air in 1935?

A. NBC?

Q. Yes.

A. No, I don't. We had them but its been four years ago, and I just don't remember. I think the total for the indus[fol. 971] try, I believe I recall that figure, was approximately eighty-seven million five hundred thousand dollars.

Q. Do you know what was taken in by the industry for time on the air this past year—1939?

- A. Well, I am going to have to guess because I am not engaged in it—I think something like one hundred and twenty-five and one hundred and thirty million dollars.
 - Q. This has increased steadily over the years since 1935!

A. I believe that is correct.

Q. What did ASCAP obtain from the industry in 1935 for its license fee?

A. The figures furnished me at that time were two million nine hundred and ninety-five thousand dollars.

- Q. Do you think that was too much or too little!
- A. I don't know.
- Q. You don't know?
- A. No.
- Q. You never expressed any opinion on it?
- A. I never did.
- Q. Do you know what ASCAP got from the radio industry this past year?
 - A. No, I don't.
- Q. Would you say it obtained too much from the industry?
 - A. I don't know.
- Q. Well, from your knowledge of the business would you [fol. 972] say that the license arrangement between the industry and ASCAP has been of benefit to the industry over the years?
- A. The question—it has never been a question of price but of method.
- Q. Well, whether it is price or method, hasn't the industry leaped up in gross volume and taken in a great deal more money in the past five years?

A. They have increased their earnings.

Mr. Frohlich: That's all.

(Witness excused.)

Thereupon, to further maintain the issues on their behalf, the defendants produced as a witness one W. WALTER TYSON who, being first duly sworn, testified as follows:

Direct examination.

By Mr. Ellis:

- Q. State your name and place of residence?
- A. My name is W. Walter Tyson, Tampa, Florida.
- Q. What is your connection, if any, with the radio broadcasting industry?
- A. I am President and General Manager of Radio Station WFLA, Tampa, Florida, Vice President of the Florida West Coast Broadcasters, member of the Board of Directors of the National Association of Broadcasters, and also the Florida Association of Broadcasters.

Q. I believe you have been President of the Florida Association?

[fol. 973] A. Yes.

Q. What are your duties as manager of the station? Generally and briefly?

A. Anything pertaining to the business management and direction of the station from a standpoint of operation.

Q. Have you anything to do with arranging for programs or negotiations for musical selections that are broadcast?

A. Yes, sir.

Q. How do you obtain the music broadcast by your station and from what source?

A. We have a license with ASCAP which furnishes us the chief backlogs of music that we use.

Q. Do you have with you a copy of the contract?

A. I do.

Q. What is that?

A. A typewritten copy of the original.

Mr. Ellis: I offer this contract in evidence.

Mr. Frohlich: All of the contracts are in evidence.

Mr. Ellis: Very well, I withdraw the offer. I didn't realize that.

Q. How were the terms of that contract fixed.

Mr. Frohlich: Object to the question, the contract speaks for itself.

Judge Long: As to terms but not as to how it was arrived at.

Judge Hutchinson: Objection overruled.

Q. Answer the question.

[fol. 974] A. We were merely told what the contract was going to be, and conformed with it. We had no negotiations except through the National Association of Broadcasters, and, as I recall, we did give Mr. Baldwin power of attorney to negotiate the contract.

Q. At one time?

A. Yes, sir.

Q. You say you were told you had to take the contract in that form. Who told you?

A. ASCAP really told us. We never voluntarily-

Mr. Frohlich: Object to any voluntarily. Witness: I merely wanted to explain.

Judge Hutchinson: Suppose you ask him questions and see how you get along.

Q. In what form did you get the notice that that was to be your contract?

A. We have had two contracts; that is what I was attempting to explain.

Judge Hutchinson: In what form did you get notice? Witness: We got it from ASCAP.

Q. Is there anything you wish to say to explain to make it clear to the Court? Is there anything of any consequence?

A. To this extent, the first contract we had was a contract with the municipality of Clearwater, and that contract was slightly different from the Florida contract which came into being, and the result was we had to operate through the municipal contract.

Q. That was just a formal change?

[fol. 975] A. But it would involve the paying of a sustaining fee which we did not pay on the other contract.

Q. Did or do you have any substantial source for obtaining music other than from ASCAP?

A. It is the only source.

Q. Have you caused to be made up a statement or can you say how much of the income of your station is derived from the use of ASCAP music and how much is derived from other sources?

Mr. Frohlich: Objected to on the ground that there is no foundation for that.

Judge Hutchinson: Objection overruled.

Witness: Roughly about twenty-five per cent—between twenty-five and thirty-five per cent of the income of the station would be classified as not being ASCAP music.

Q. Do you have any competitors in broadcasting?

A. Yes.

Q. Name your chief competitors or indicate them?

A. Station WDAE, Tampa.

Q. Do they also use ASCAP music on this station?

A. Yes, sir.

- Q. Is there any difference between the charges made by ASCAP to your station and the charges made to your competitor for the same music?
 - A. Yes, sir.

Q. Can you explain that difference?

[fol. 976] A. My competitor has the so-called newspaper contract and we have the straight commercial contract.

Q. In other words, the competitor station is owned by a

newspaper and yours is not?

A. Yes, sir.

Q. What do you pay and what does your competitor pay!

A. We pay a sustaining fee charge—I can't really testify on that for this reason, I don't know what the other form of contract is. I only have a hazy knowledge of it, and it is a matter of hearsay.

Q. Has ASCAP ever given you a list of its compositions

in its control, or its repertoire?

A. We have a card service of some one hundred thousand cards from ASCAP, which was furnished to us by ASCAP, and also we have a list of the SESAC numbers, but we are not a SESAC licensee. I think that they both are incomplete.

Q. From your knowledge of the broadcasting business, state your opinion as to whether or not it is practical to arrange for the use of musical compositions in the field of what is called popular music on a per use or per piece

basis.

Mr. Frohlich: I object to that, your Honors, because there is no testimony here by this witness or anyone else as to what a per piece system is.

Judge Hutchinson: What is the purpose of this?

Mr. Ellis: Read the question. (Question read by reporter.)

[fol. 977] Judge Hutchinson: Judge Long said overrule it. Objection overruled. Read the question to the witness.

(Question read by reporter.)

Witness: You asked for an opinion?

Q. Yes.

A. I would say that if the Florida Act was in operation, I believe we could.

Judge Hutchinson: That is as good an answer as you could expect.

Q. You could negotiate such arrangements with individual copyright holders?

A. I believe I could under the Florida Act.

- Q. Does a lot of your music come in over the NBC Network?
 - A. It does.
 - Q. Do you have a contract with them?
 - A. Yes, we do.
 - Q. Will you produce the contract?
 - A. I have it in a brief case.

Mr. Ellis: I would like to offer the contract with NBC in evidence, and I ask leave to substitute a copy.

Witness: There is an original contract and a photostatic copy of it.

(Thereupon, the said contract dated February 20, 1935, was admitted in evidence, and marked Defendants' Exhibit No. A6.)

Mr. Ellis: That's all.

[fol. 978] Cross-examination.

By Mr. Frohlich:

- Q. How many years have you operated a broadcasting station?
 - A. I have been actively managing a station since 1925.
- Q. And in all of those years have you operated under a blanket license with the American Society?
- A. For the first two years we had no license at all, and they finally convinced us we should.
 - Q. In the first two years you were new in the business?
- A. Not necessarily. We hadn't been sold an ASCAP contract by the representative in the area.
- Q. In those first two years you were using a great many pieces of music which belonged to the members of the Society?
 - A. We were convinced of it by the Societies' attorney.
- Q. You were using copyrighted compositions in those years?
 - A. Yes, 1925 and 1926.
- Q. Did you pay anybody for the use of those compositions?
 - A. We finally made a blanket license.
- Q. Did you pay anybody in 1925 and 1926 for the use of those musical compositions?
- A. We were operating as a municipality at that time and we did not.

Q. In the operation of your broadcasting station did you play or perform musical compositions owned by persons other than members of the Society?

A. Occasionally. Yes, sir.

[fol. 979] Q. Did you pay for the use of those compositions?

A. We have paid for them. Yes.

Q. Whom?

- A. Individual copyright holders for performance use.
- Q. Can you give us the name of one holder you have ever paid?
- A. I am not prepared to at this moment, but we have done so.
- Q. Isn't it a fact that you didn't take a license until you were told you would be sued for infringement?

A. I think, substantially, that is correct.

Q. And you never voluntarily paid anybody for the use of musical compositions unless you were compelled to enter into an agreement, have you?

A. No, I never testified to that; since then we are more

familiar and we have paid.

Q. You testified that about twenty-five or thirty per cent

of your programs consisted of ASCAP music?

A. No, sir, I testified that about twenty-five per cent of the programs do not have ASCAP music.

Q. You did? A. Yes, sir.

Q. So that about seventy-five or eighty per cent do have ASCAP music?

A. I would say that. Yes.

Q. When you made your arrangement or your renewal of your contract in 1935, didn't you know that the National Association of Broadcasters, at that time, were acting in [fol. 980] your behalf with ASCAP?

A. I did.

- Q. And you were finally informed that the negotiations had ended and a contract consummated?
- A. We were informed that a contract would be offered to me for signature.
- Q. Did you write any letters to the Society in which you said you wouldn't accept any contract?

A. No, I don't believe I did.

Q. Did you sign on the dotted line?

A. I had no alternative.

Q. And you sent back the contract signed?

A. Yes, sir.

Q. Do you have any contractual relations with any other association similar to the Society?

A. No. sir.

Q. Do you keep a log of your compositions?

A. We do.

Q. Is it a complete log of every composition played?

A. Yes, but not on the network. Locally.

Q. If you kept a log you would have to have a log of the network programs as well as your local programs, wouldn't you?

A. We have no knowledge of what the network is going

to play in advance of the broadcast.

Q. That's covered by the blanket license which the network has with ASCAP?

[fol. 981] A. No, I have an individual station license. That has never been necessary for a station affiliated with the network.

Q. When the network broadcasts you don't have to negotiate with the composer?

A. Yes, sir.

Q. And for your local programs you rely on ASCAP?

A. Correct.

Q. Will you tell us, in your own language what you mean by a per piece system?

A. A per piece system as I understand it?

Q. Yes.

- A. A per piece—per use of each individual composition as may be required by the station and each on separate performance.
- Q. Now, in order to keep account of these per uses or per performances of each piece, wouldn't you have to keep an extensive log?

A. Yes, we would.

Q. And you would have to keep that for every program you put on, wouldn't you?

A. We are doing that now.

Q. How many hours a day are you on?

A. Seventeen hours.

Q. Do you keep a log of every composition performed on your station?

A. Yes, sir, locally.

Q. And do you furnish that log to anybody? [fol. 982] A. No one has ever asked for it; it is on file at the station.

Q. It is? A. Yes, sir.

Mr. Frohlich: No more questions.

(Witness excused.)

Thereupon, to further maintain the issues on their behalf, the defendants produced as a witness one L. S. Myrchel who, being first duly sworn, testified as follows:

Direct examination.

By Mr. Ellis:

Q. State your name and place of residence?

A. L. S. Mitchel, Tampa.

Q. What is your business, Mr. Mitchel?

A. Manager of a radio broadcasting station.

Q. What is the name of the station?

A. WDAE.

Q. Radio Station WDAE?

A. Yes, sir.

Q. This station is located in Tampa, Florida?

A. Yes, sir, at Tampa.

Q. How long have you been connected with the radio broadcasting business, and have you stated what your position is?

A. I am General Manager of the station, and have been for approximately nine years.

[fol. 983] Q. Were you connected with the broadcasting industry prior to that time?

A. No.

Q. Where do you get your music?

A. Mostly from ASCAP.

Q. You have some arrangement with NBC Network?

A. No, Columbia Broadcasting System. We are affiliated with them.

Q. Do you have a copy of your contract or original contract?

A. I have the contract itself.

Mr. Ellis: We can make a copy of it and return the original.

Witness: This is the present contract that is in force now. Mr. Ellis: I offer this contract in evidence and ask leave

to substitute a copy.

Judge Hutchinson: All right.

(Thereupon, the said contract dated January 11, 1940, was admitted in evidence and marked Defendants' Exhibit No. A-7.)

Q. Do you have any substantial other source of music other than ASCAP?

A. We have a license with SESAC but over a long period. We find we use very little of their music because it isn't in shape for public performance.

[fol. 984] Q. Do you have a license agreement or contract with ASCAP?

A. Yes, sir.

Q. How was that negotiated?

A. Well, ours is different than some of them. Back in 1932, there was a group that got together and negotiated the so-called newspaper contract. At that time ASCAP offered two contracts to us—either the standard or the newspaper contract, and we considered the newspaper contract had certain advantages and we accepted it.

Q. Why did they offer to give you that option or al-

ternative?

A. Well, at the time the group, I know who they were, presented arguments to ASCAP to the effect that newspapers were in a position to aid in the music business and we should have a little bit better terms; that's just my recollection of things. I was not a party to the negotiations. In any event, ASCAP thought enough of it to offer it to separate stations owned fifty-one per cent or more by a newspaper in the United States and that contract was sent to us, but, at the same time, they asked us if we would prefer the other.

Q. What is the difference in the rates?

A. The chief difference in the rates after they really get going is in the newspaper contract you don't pay on material that doesn't contain the societies' music other than what we call spot announcements coming between musical programs.

Q. That's under your contract?

Q. State what the savings was?

A. Five thousand one hundred dollars in round numbers.

Q. Are these the figures you prepared?

A. Yes, five thousand one hundred and eleven dollars and eighteen cents, we figured we saved.

Q. For 1937†

A. For '38 and '39.

Q. Will you state in the record the amounts received by your station from all sources and the amounts received on account of the use of ASCAP music?

A. Say that again, please; I didn't quite understand.

Mr. Ellis: Read the question, please. (Question read by reporter.)

Witness: I can do that for each year.

Q. Just the totals?

A. By years?

Q. Yes.

A. In 1937, \$108,740.31 was the gross business, and we [fol. 986] reported on \$83,114.87.

Q. To ASCAP!

A. Yes, sir, that was the amount of business we ran that used music. We didn't try to break it down. You want the other years?

Q. Yes, for 1938, and 1939?

A. Gross business for 1938, \$102,614.42; we reported to ASCAP on \$75,299.05.

Q. 19391

A. 1939 gross business, \$120,937.02, and we reported to ASCAP on \$97,442.63.

Q. Do you have any local competition in the broadcasting industry?

A. Yes, WFLA.

Q. That is the station managed by Mr. Tyson?

A. Yes, sir, Mr. Tyson.

Q. From your experience in the broadcasting business, will you state your opinion whether or not it would — profitable or favorable to negotiate and arrange for the use of music compositions with individual holders of copyrighted music based on what is called a per use or per piece basis?

Mr. Frohlich: Same objection. We object on the ground that it is incompetent, immaterial and irrelevant.

Judge Hutchinson: Same ruling. Objection overruled. Witness: I am not qualified to answer that question, because I don't know.

[fol. 987] Mr. Ellis: Your witness.

Cross-examination.

By Mr. Frolich:

Q. Do you remember receiving a letter from Mr. Mills on or about April 12, 1938?

A. Well, I wouldn't know; I have quite a few letters from him.

Q. I will show you this copy and will you see if you can

refresh your recollection (handing letter to witness)?

A. I think I received the letter, and I don't believe I answered it.

Q. You did?

A. Yes. About that time ASCAP started sending back our mail.

Mr. Frohlich: I would like to offer this in evidence.

Mr. Ellis: What is the purpose of it?

Mr. Frohlich: He talks about the per piece system. I think it will throw a little light on this question as a disgruntled broadcaster.

Q. Do you remember this paragraph in the letter, "You are a practical operator. Would you mind telling me with entire frankness and candor just what your preference would be as between the two different methods of securing licenses to publicly perform copyrighted music? ASCAP desires to be constructive in its consideration and treatment of this matter. We desire above all to have a friendly and good will relationship with out licensees"? Did you answer that letter?

[fol. 988] A. If I did answer it I told him we were satis-

fied with the form of newspaper contract, but the amount of money didn't always please us.

Mr. Frohlich: We offer the letter in evidence.

(Thereupon, the said letter dated April 12, 1938, was admitted in evidence and marked Complainants' Exhibit No. 4.)

Q. Under that newspaper contract the guarantee is four times the sustaining fee?

A. Right.

Q. Have you found it a burden to your business to pay a license fee to ASCAP?

A. We haven't found it a burden because we have made it a point to sell broadcasting that contained that music and saved ourselves quite a bit of money that way.

Mr. Frohlich: That's all.

(Witness excused.)

Mr. Ellis: If we can agree that the contracts between ASCAP and NBC, and the contract between ASCAP and CBS—that each contains a provision requiring their important stations to use ASCAP music, we don't need the contracts.

Mr. Frohlich: That, I can't say; we will have to look at the contracts.

Mr. Ellis: I offer in evidence a copy of the mintues from [fol. 989] the Regular Meeting of the Board of Directors of ASCAP, Friday, June 3, 1932, which was produced by the plaintiff.

Mr. Frohlich: There will be no objection if the entire minutes are offered.

(Thereupon, without objection, the said minutes were admitted in evidence and marked Defendants' Exhibits No. A-8.)

Mr. Ellis: I understand that we have a stipulation that counsel for either side may read from, or submit to the Court, the contents of the deposition of Mr. Morris taken in the Nebraska Case in the United States District Court of Nebraska, and at a conference either side will designate to the reporter, after arguments, such other portions that are to be copied in the evidence.

Judge Hutchinson: Let the record show that either side has the right to refer to any part of that record he wants to. Do you want now to limit yourselves to the particular piece you are going to use in that record.

Mr. Frohlich: No, sir.

Stipulation

It is stipulated that the foregoing relates to all of the depositions taken, or evidence, in the case of Buck v. Swan-[fol. 990] son in the District Court of Nebraska.

Mr. Ellis: We rest, your Honor.

Mr. Wideman: If the Court please, from the standpoint of the complainants the trial is nearing an end, and the point that remains, however, we honestly believe to be a very important part, and it will be directed and confined to one such matter.

At the outset of the trial the Court recognized that there was, first, important questions of law to be considered, and which the Court is not concerned with at the trial, and suggested that, possibly, very few, if any, factual matters were to be developed. We think a good portion, probably, of the testimony that has been offered yesterday and today is in the long run immaterial, but we do think, however, that the chaff has been separated from the wheat, and that the one outstanding factual situation that should be developed that the burden is upon us to develop, and that is to demonstrate the utter impossibility of complying with the Florida Statute; the impracticability of endeavoring to name in advance a price for each separate performance of music. The impracticability of adopting some theoretical per piece, per program, or per use system which has been intimated to the Court, and which in years gone by has been indi-[fol. 991] cated and suggested, but which has never been presented full blown to the American Society or to any Court despite much litigation of which the Society has been a party to since its organization in 1914.

Therefore, we do earnestly ask the indulgence of the Court in allowing the rebuttal testimony of Mr. Mills and Mr. Paine. It will be directed to this one subject. It will certainly not take more than an hour and a half or two

hours depending on the cross-examination.

Judge Hutchinson: Do you mean the constitutionality of the Act could be—rather, the unconstitutionality of the Act could be shown if it is impossible of performance, or difficult of performance?

Mr. Wideman: Either one, your Honor—so difficult as to interfere seriously with our right to distribute in Florida and market our property in Florida. It is not a question, as the Court indicated yesterday, of two separate sides of its business, one the ASCAP method of blanket license and the other this per piece system which has been indicated by the broadcasters. It is a question of the life and death of ASCAP in the state of Florida.

Judge Hutchinson: What I am trying to get in my mind, is there a difference in these sections as they apply to combinations and as they apply to individuals. Is there a posfol. 992] sible difference in the bearing of the evidence on the activities of these persons if they act individually or by combines.

Mr. Wideman: There is not, your Honor, as we see it.

Judge Hutchinson: Couldn't the State make some requirement of a combination that it couldn't make of an individual?

Mr. Wideman: Possibly so.

Judge Hutchinson: Shouldn't there be a distinction made on the requirements of an individual or a combine?

Judge Long: As I understand it, you want to introduce the witnesses Paine and Mills for the purpose of showing it is not practicable?

Mr. Wideman: Yes, your Honor, in fact, impossible. Judge Long: Haven't they already testified to that?

Mr. Wideman: They have just begun to scratch the surface, and it is a vital part of this case.

Judge Long: I understood Mr. Mills to say it would be impossible.

Mr. Wideman: We earnestly ask the indulgence of the Court.

Judge Long: He testified he couldn't do it for this reason and for that reason, and it seems to me like that is repetition.

Mr. Wideman: There will be repetition, but I think you [fol. 993] will agree there will be some enlightenment—the subject has not been fully developed from our standpoint. As a matter of fact, we were uncertain yesterday whether the Court would permit us to show the impossibility of performance of the Act, but when the defendants came along

and were allowed to put in exhibits freely to show why

you could comply with it, why, we-

Judge Hutchinson: Judge Long's idea is correct. You shouldn't have them repeat what they have said, and they should not take the stand for the purpose of arguing the case for you. However, you certainly have kept faith with the Court. We will be as patient as our needs permit us to be.

Mr. Wideman: They are going to testify to the facts and that is the reason I have been so emphatic.

Judge Hutchinson: They can't take very long; let-s go

along and see how we get along.

Mr. Ellis: I think it is foolish and ridiculous to have these gentlemen back on here.

Mr. Wideman: They are individual complainants along

with the Society.

Judge Hutchinson: The Court will recess until two o'clock.

(After recess, 2 o'clock P. M.)

Thereupon, to further maintain the issues on their be[fol. 994] half and in rebuttal, the complainants recalled as
a witness one Edwin Claude Mills, who, having been previously sworn, testified as follows:

Direct examination.

By Mr. Frohlich:

Q. I show you Defendants' Exhibit No. A-2 being the "Illustrative List Of Musical Compositions And Data Relative Thereto (Excepting Prices) Such As Might Be Filed By A Music Publisher With The Comptroller Of Florida "", in this case the Broadway Music Corporation, and I ask you to look at Page One of this list and note the ninth column on that page (handing exhibit to witness)?

A. Yes, sir.

Q. Now, what you do find listed as the last column?

A. Schedule of prices for each performance for profit

of each composition, Section 4-A.

Q. Please, tell us, Mr. Mills, what the Broadway Music Corporation would have to put in that column in order to obtain revenue for its performing rights in Florida?

A. Well, it would have—the copyright owners would have to, with respect to each of the compositions, establish in advance, in order to have it down on this list, the prices for each and every one of the many types, many different types, of uses for a public performance for profit which there might be of these compositions. May I interject some[fol. 995] thing? I know this catalogue very well and this catalogue does not contain dramatic works.

Q. How many different kinds of users are there licensed

by ASCAP1

A. Well, as many different kinds of establishments as there are which perform—publicly perform copyrighted-music. That is to say dance halls, motion-picture theatres, cabarets, night clubs, restaurants, broadcasting stations, circuses, carnivals and a number of other types of establishments that publicly perform copyrighted music.

Q. Do all dance halls operate on a uniform basis?

A. No.

Q. How do you go about listing prices for the various methods of operation for a dance hall?

A. Well, some dance halls operate on what they call a taxi policy; there is no admission charged at all, and those who come pay so much to dance for each dance. Some halls operate by charging an admission per couple—

Judge Hutchinson: You are talking about how dance halls operate, and he is asking about music prices.

Witness: Well, the prices would be fixed according to the operating policy of the dance halls and this depends on its capacity, size, the prices charged for admission, and the various other elements that enter into its profit making possibilities.

Q. For example, would you license a large dance hall that employs an orchestra of five pieces each night on the same [fol. 996] basis as you would some little dance hall that only uses a violin or piano?

A. No, that isn't done and it wouldn't be done. The fee is greater when the use is greater and the profits of the business are greater. The price charged for the license to publicly perform music is relative to the profit possibilities and the use.

Q. Also will you tell us how many types of operations there are of dance halls and how the charges are allocated?

A. Without going into great detail, I would say there are, probably, twelve different types of operations-dance halls operating on different types of policies. Dance halls can be divided into about five size types or classes. For example, the dance hall that will accommodate about fifty couples such as the one called the Nightengale on the outskirts of this town. Then, a dance hall I have in mind in Jacksonville that accommodates one hundred and fifty couples-I don't recall the name of it is another type or class. Then, a dance hall that will accommodate five or six hundred couples such as the Aragon in Chicago which employs two big orchestras playing a continuous musical program with no intermission, when one orchestra stops playing the other one starts. Now, again in those types of dance halls their policy will vary. One might be a free admission place where they sell beer and refreshments and make most of their money in that way.

Q. Let's take the picture theatres. Is the operation of these theatres uniform?

[fol. 997] A. By no means; they again are divided into classes with different operating policies as the basis of classification. There is the very small theatre operating one or two nights a week in very small so-called country towns with a pure picture policy. Then, there is the larger theatre that shows not only pictures but has an organist—a living musician, and a continuous operating policy, operating seven days a week. Then, there is the still larger motion picture theatre that presents prologues—using living talent such as the Oriental Theatre in Chicago, or Radio Music Hall in New York, with a larger audience and a higher price of admission. There are about eight different classes of motion picture theatres, and each classification is for the purpose of determining performing right fees.

Q. Would the fees be different with respect to each classification?

A. Oh, obviously. You couldn't possibly charge the same price per piece or per use to the little theatre in the town—

Judge Hutchinson: In every case you mean that the price is apportioned individually; it would have to be what the traffic could reasonably bear, and in order to cover every conceivable situation you would have to make a very thorough canvas-1

Witness: Yes, sir. I don't like to phrase it that way, but the fellow who can just make a living could not be charged as much as the man that makes huge profits.

[fol. 998] Q. With respect to hotels are there different classifications?

A. Yes, a great many of them. Perhaps, more of them then any type of establishment you have heretofore queried me about.

Judge Hutchinson: It isn't helpful to us to have the enumerations of the various kinds of classifications. He can say there are many kinds—some more profitable and some less.

Witness: Your Honor, that would be true as to types of establishments which publicly perform music.

Judge Hutchinson: I am suggesting that you make your answers in more general form.

Q. How many kinds of establishments and classifications of users would you say there are?

A. Once in my own study of the possibilities of adopting this per use or per program formula for the broadcasters, I analyzed three hundred and sixty different kinds of uses, practical uses, general uses—three hundred and sixty kinds.

Q. Would the copyright owner who made up his schedule with all uses in mind have to come down and obtain information in the State of Florida with respect to these establishments?

A. He would have to come down and get the information or imagine that the State of Florida contained the same diversification as anywhere else. If he did assume that he would have to establish a schedule showing the prices for those different places.

Q. So taking three hundred and sixty as the number of classifications of these groups, there would have to be about [fol. 999] three hundred and sixty different prices with respect to each composition?

A. To do justice to all different types of users. Yes, sir.

Q. Wouldn't the success or percentage of popularity of the particular composition differ in every respect in a publisher's catalogue?

A. Obviously the fee charged for George Gershwin's "Rhapsody In Blue", for example, would be a higher fee than some run of the mill composition.

Q. Having obtained that information for the price schedule, wouldn't the proprietor have to come down here to police it?

A. Yes, sir.

Q. And find out who is using it?

A. Yes, sir.

Judge Hutchinson: He wouldn't have to come down, but he would have to have it policed by somebody in some way?

Witness: Yes, your Honor, it would have to be policed, but this goes further than that. If I may illustrate, the "Rosary" the music was written by Ethelbert Nevin and Frank Stanton wrote the words; both composer and author are deceased. Mrs. Nevin is eighty-five years old and physically incapacitated and lives in New York. Mrs. Stanton is a bedridden invalid living in Atlanta, Georgia, and they [fol. 1000] between them control the performing rights in the "Rosary". It is still copyrighted. Mrs. Nevin could completely decline-I have known them both intimately and personally through the years, to place any price in advance on the use of the "Rosary", and Mrs. Stanton would say, I know by reason of actual experience—she would say, "Mr. Mills, I don't want this used on any program that advertises liquor", and I could multiply that situation many times except for taking your time-she would decline to make a price in advance.

Judge Hutchinson: It wouldn't be material—as to a blanket license you have no such limitation.

Witness: Yes, your Honor, because the same limitations are on us. Gershwin will not permit his Rhapsody In Biue on small—

Judge Hutchinson: I move to strike those things as not material. The personal idiosyncrasies of the composers—I don't see how that is material in this case at all.

Witness: She just wouldn't put the price-

Judge Hutchinson: You shouldn't go into the difficulties that you have because those same difficulties arise under the license.

Mr. Ellis: I make that motion.

Q. Mr. Mills, do you know of your own knowledge whether dance halls throughout the country keep any records or logs [fol. 1001] or their compositions?

A. They do not.

Q. Could they operate if they were compelled to operate on a per piece or per program system?

A. As presently constituted, no.

Q. Isn't it necessary for them to have available at a moment's notice this catalogue of music?

A. Instant notice.
Q. To play encores?

A. Yes. For instance, if an orchestra is playing at a dance and a couple dances by and says, "Play 'Hasty Tasty' next", well, they have to be ready to play it or lose their popularity.

Q. Do you know whether any individual copyright owner

has ever licensed any dance hall to use his music?

A. Not to my knowledge.

Q. Did any users of copyrighted music, to your knowledge, prior to the organization of ASCAP apply for licenses to individual copyright owners?

A. No.

Q. Since ASCAP has been established what has been your experience with respect to users voluntarily applying for licenses?

A. That there have been no voluntary applications except as the result of representations made by the Society.

Q. Has that been the general rule?

A. Almost an invariable rule.

[fol. 1002] Q. Could individual copyright owners, without acting in combination, license the use of their compositions here in the State of Florida?

. A. Any individual copyright owner is helpless to protect

his rights. It is hopeless.

Q. Has that been the history of copyrights?

A. As regards the public performance for profit that's been the history of all copyrights all over the world.

Q. In your opinion, and from your experience and knowledge, is a combination of copyright owners necessary to protect their interests?

Mr. Ellis: Object to the question asked—he is asked to give a legal—

Judge Hutchinson: What was the question.

Mr. Frohlich: Read the question. (Question read by re-

porter.) Now, will you answer the question.

Witness: In no country in the world since the beginning of the copyright laws has the individual composer been able to protect his right. They have had to organize these Societies, and where they are not organized their rights have been continuously infringed.

Q. Assuming you had gotten up a complete list of the schedule of prices and the other information which you saw on that exhibit, Mr. Mills, and this list was filed in Tallahassee, can you tell us how the individual copyright owner, [fol. 1903] acting either alone or the individual acting in combination with another individual would go about collecting revenue and collecting the prices on that list?

A. There is nothing in the law that gives him any oppor-

tunity to collect the prices that would be set out.

Q. So that he would first have to find out whether it was used?

A. Right.

Q. And having found that out he would have to seek some method of collection?

A. Yes, he would have to put his prices on file and that the composition had been played and then prove he hadn't been paid for it.

Q. There was some testimony this morning, Mr. Mills, about the newspaper broadcasting contract. Will you be good enough to tell us when the newspaper broadcasting contract was negotiated for the first time?

A. In 1932.

Q. And under what circumstances were these negotiations had?

A. There was a long series of negotiations between a committee representing ASCAP and a committee representing the National Association of Broadcasters. As a result of those conferences a formula for commercially operated stations was devised and a contract was drawn up under that formula. The formula was approved by the National Association of Broadcasters and the Society. After it had been approved within a week or so a committee called on us representing the so-called newspaper owned broad-[fol. 1004] casting stations of which there were at that time some fifty-five, according to my recollection. This was in 1932. They represented to us that the newspapers, throughout the country, devoted a great deal of white space to the furtherance of the cause of music, and that they ought to have some sort of special consideration from the composers and authors of music, because of the added interest in music

through them. They wanted to negotiate a special agreement adapted to their particular needs-they didn't operate commercial stations in those days; their chief function at that time was the distribution of weather and crop reports. financial reports and so forth. They seemed to make a good case and we listened to them. Then, we consulted the executives of the National Association of Broadcasters, who had approved the other agreement, and we asked them if they had any objections to our dealing with these newspaper owned stations and they said, no, and these negotiations resulted in a different form of contract—the so-called newspaper owned station contracts. It was adopted and each newspaper in the United States was offered the option of the commercial contract or the newspaper owned contract, and the best evidence of the fact that/it is not as advantageous as may seem when compared to the other contract is that of the fifty-five newspaper owned stations at that time only fifteen elected to take that contract. It had certain stipulations that more than balanced its advantages. was submitted to the National Association of Broadcasters [fol. 1005] and approved by that association before we agreed to make that newspaper contract. It was all open and above board, and this committee that negotiated on behalf of the newspaper owned stations contained members of the board of directors of the National Association of Broadcasters-Walter Dann of the Milwaukee Journal and-

Judge Hutchinson: What is the importance of the names of those members.

Witness: To show-

Mr. Frohlich: I wasn't interested myself in the names.

Q. Were these negotiations had again in 1935 with the newspaper owned stations?

A. No, sir, with the National Association of Broadcasters only.

Q. Did you inform the NAB then that you were renewing the newspaper contracts?

A. Yes, sir.

Q. It was done with their full knowledge?

A. Yes, sir.

Q. Have you ever been furnished by any representative of the broadcasting industry or any other user of music in

the United States a formula for a per piece or per program

system of licensing public performances for profit?

A. ASCAP has requested repeatedly that such a formula be presented, and it never has been able to get it from any of them.

Mr. Frohlich: Your witness.

[fol. 1006] Cross-examination.

By Mr. Ellis:

Q. Mr. Mills, how many classifications for uses do you have in Florida now under your blanket license system?

A. Only two classifications.

Q. Those are the only ones you use?

A. No, as between two different types of music.

Q. Classifications of users?
A. Classifications of users?

Q. How many different kinds of contracts do you have in

Florida through ASCAP?

A. As many different kinds as there are different kinds of establishments—dance halls, theatres, night clubs, cabarets—

Q. Do you know how many of these?

A. No, sir, I don't. I don't know how many different types of establishments there are in Florida.

Q. You said you fixed your prices for the use of ASCAP music on the profit making possibilities of the use?

A. Yes, sir.

Q. And that's determined by ASCAP, is it not?

A. It is determined by ASCAP and the different type of

users through negotiation.

Q. In substance isn't that the same as when they say in traffic circles—what the traffic will bear? Don't you charge as much as the business will reasonably stand?

A. No.

[fol. 1007] Q. What it can stand and keep going?

A. No, sir.

Q. You voluntarily give reductions?

A. Yes, sir.

Q. Well, give us an instance or two in Florida?

A. At the moment my memory doesn't recall one in Florida.

Q. That is all I asked about.

Judge Hutchinson: You asked him generally.

Mr. Ellis: I believe I added in Florida.

Witness: Is the question still limited to Florida?

Mr. Ellis: Yes.

Q. Is there anything in the way ASCAP does business that would prevent it from filing a per piece price just before a user would be authorized to give a public performance which included a piece of its music?

A. No, nothing in ASCAP's method of doing business, but everything inherent in the operation would be involved.

Q. Is there anything peculiar about the music business or your system, that would prevent you, if you had an unusual use, an odd shaped dance hall—a dance hall out of the ordinary, that required your fixing a new price, or assuming you fixed a different price for every dance hall, is there anything that would prevent your forwarding a statement of the price for that use to the Comptroller at the time you made the deal, or ten minutes before?

A. Yes, sir.

[fol. 1008] Q. What would prevent you from doing that?

A. The vastly complicated process that would be necessary in gathering the evidence of ownership of a complete catalogue, or comprehensive catalogue of copyrights, and filing a statement under oath that this was a correct statement of the facts when offered. We don't know them ourselves. This requires an investigation in many different places and many people when these copyrights have passed into an estate. It is almost impossible to do. And the failure to file a complete catalogue, when an illegal use is made—the failure to file a copy under oath, the result is to deprive the owners of his right under the copyright. That's the practical result.

Q. I don't quite get you yet, but I will pass it. Now, one of the stipulations in the newspaper contracts which some of the papers took into consideration and which influenced some of them to take it was the reduced rate, wasn't it?

A. The newspaper form of contract required that the broadcaster taking it must, in any event, pay not less than four times the amount of the sustaining fee; that was to be the minimum payment under any circumstances under the contract. In other words, if the profits which accrued as the result of receipts from the sale of advertising programs did not aggregate an amount four times the amount of the sus-

taining fee, he would have to make a payment of the difference. Then, he was to pay at the beginning of the first year of the contract a percentage of five per cent of his receipts from commercial programs which used ASCAP [fol. 1009] music. The commercial contract required no minimum guarantee, but specified a fixed sustaining fee plus three per cent for the first year, four per cent for the second year, and five per cent for the third year of a three year contract from all receipts from the sale of time. The accountings were to be rendered in the same manner and at the same time. The guarantee on both sides was just the same.

Mr. Ellis: That's all.

(Witness excused.)

Thereupon, to further maintain the issues on their behalf, and in rebuttal the complainants recalled as a witness one John Gregg Paine, who, having been previously sworn, testified as follows:

Direct examination.

By Mr. Frohlich:

Q. Mr. Paine, do you know from experience how the various rights under the Copyright Act given to a proprietor of a musical composition are divided up?

A. Yes, I do.

Q. With respect to dramatic musical works, can you tell us how these as a rule are owned and held—by whom?

A. Dramatic musical works are divided into a great variety of rights—exclusive licenses or grants to station broadcasters, to road show companies, amateur rights, stock company rights, and various rights of that character. [fol. 1010] In endeavoring to clear the right of a motion-picture or a drama—musical drama, you have to clear everyone of those rights.

Q. Now, these various rights, are they held by one individual?

A. By all kinds of people; sometimes individually and sometimes a corporation. They are always held by different people.

Q. Are the "small" performing rights or any of the performing rights of these compositions frequently in doubt with respect to ownership?

A. Yes, definitely.

Q. That has been your experience in ASCAP?

A. Yes, sir. For example, a composition like "Maytime", we have difficulty in determining whether or not they are in the ASCAP repertoire.

Q. There are frequent litigations?

A. Yes, sir.

Q. Can you give us an illustration?

A. Well, we had a litigation over "Maytime"—in reference to "Maytime".

Q. That was brought by Schuberts against Harms?

A. No, Sherman.

Q. Now, in cases where there are conflicting claims would it be possible for anybody with any degree of honesty to make an affidavit that he owns the performing rights?

A. No, sir.

Q. In cases where copyrights have been renewed have conflicts arisen frequently with respect to the performing rights?

[fol. 1011] A. Yes, sir, "Waltz Me Around Again, Willie", is a typical example of that. When a renewal comes due anybody entitled, under the law, can take out a renewal, and so in this case we have the widow of the composer of the melody, and the widow of the author of the words taking out a renewal, and those two women have grown to a point where they just hate each other. To get any kind of clearance is really a complicated task."

Q. Are they both members of ASCAP?

Mr. Ellis: I move to strike that line of testimony, or any further testimony along this line. That is the right protected by the Constitution.

Judge Hutchinson: What particular harm is he doing! It may not be of any value. It is like the motive for the organization of ASCAP—it is not material if the Statute violates no rights as guaranteed by the United States. If they want to have a little speech on it, it is all right as long as they don't take more than four or five minutes.

Mr. Frohlich: I simply wanted to point out the practical difficulty of complying with the Statute, your Honor. No further questions.

Mr. Ellis: No questions.

(Witness excused.)

Mr. Frohlich: I want to be sure that the depositions we have taken in New York in this case go in. For the record, I will mention the names of the witnesses.

[fol. 1012] Judge Hutchinson: Just say all of the depositions taken by you are offered in evidence.

Mr. Frohlich: And the exhibits with them.

Judge Hutchinson: Very well.

Mr. Ellis: At the hearing in October, 1939, it was announced on behalf of the Attorney General and the States Attorneys that they did in substance accept or not object to an injunction against the enforcement of Sections 2-A, 2-B, and 6 of the Act of 1937. That offer has been pending since that time and throughout this trial. It has not been accepted or acted upon, and I, therefore, withdraw the offer, but I don't mind stating to the Court that the Attorney General and the States Attorneys consider that those sections have been superseded or repealed by the Act of 1939, and that no prosecutions will be instituted under those sections, or any effort made to enforce them against the plaintiffs in this case.

Judge Hutchinson: Wasn't an order granted enjoining them?

Mr. Ellis: I believe temporarily against this entire Act. Judge Hutchinson: I remember that something was said about that. It was understood that those sections were not to be enforced.

Mr. Boggs: There was some objection by the plaintiffs [fol. 1013] and the Court said in Jacksonville that it would carry that thing over.

Judge Hutchinson: Do you want to withdraw that offer?

Mr. Ellis: I do object to being enjoined.

Judge Hutchinson: On the ground that they do not exist and there is no reason for an injunction, and you are making a statement of record that you do not intend to prosecute under those sections?

Mr. Ellis: Exactly. I don't want an injunction against the Attorney General if the other sections of the Act are valid.

Mr. Frohlich: May I at this time offer in evidence two pages of a Bill which was introduced in 1939 in the Florida Legislature which purported to repeal Sections 2-A and 2-B and 6 of the 1937 Florida Law, which Bill was not passed, and it was introduced at the same time that the 1939 Bill in issue here was.

Judge Hutchinson: If they will stipulate about that. Mr. Frohlich: I have a copy of the Bill.

Mr. Ellis: It is stipulated that that was a copy of the Bill and the Bill failed.

(Thereupon, the said copy of the proposed Bill was admitted in evidence and marked Complainants' Exhibit No. 5.)

Mr. Ellis: These are to be filed and noted in the record [fol. 1014] at the conclusion of defendants' case, the contract between ASCAP and the National Broadcasting Company, Inc., dated August 31, 1932, as Defendants' Exhibit No. A-9, and a copy substituted, and as Defendants' Exhibit No. A-10, a contract dated August 31, 1932, between the same Society and the Atlantic Broadcasting Corporation which corporation was the predecessor of the Columbia Broadcasting System, and a copy substituted.

(Thereupon, the above mentioned copies of contracts were admitted in evidence and marked Defendants' Exhibits Nos. A-9 and A-10, respectively.)

Mr. Ellis: We are ready on arguments as to the law.
Judge Hutchinson: Wouldn't it be desirable to put some
sort of fair limitation on the argument?

Mr. Ellis: I am agreeable to that.

Mr. Wideman: I suggest not more than forty-five minutes to the side.

Mr. Ellis: That is ample, your Honor.

Judge Hutchinson: There will be a ten minute recess.

[fol. 1015] (After recess.)

ABSUMENT TO THE COURT

By Mr. Frohlich:

May it please the Court, I think it will be most helpful to the Court if I analyze these two Statutes. I don't think there is any sense of my going into the evidence at this time. You have heard the testimony, and, I think the thing that will clear up, perhaps, any misconception at this time is an analysis of these two Statutes themselves.

Here is what I view as the basic vice of these two Statutes. I say these two Statutes because they are not two

independent, isolated Statutes, because one followed the other in two years and there was a purpose and an object for putting them on. They were designed, in my opinion, not to prevent monopoly in the State of Florida, because the Sovereign State of Florida has very sound and good laws that prevent monopoly. They were designed to take away from the individual copyright owners of musical compositions in this country the exclusive rights granted to them by the Copyright Act. That is a wide and broad statement, and I am going to try to justify that by showing you how this was done—what the motive was, why it

was done, and who was behind it.

Now, who was behind it? I don't believe I have to say. Your Honors have heard the testimony. Draw your own conclusions. But here is what happened. In 1937 when the [fol. 1016] first Statute was passed, like the second Statute, it was divided into two parts. One part was directed against combinations of two or more individuals, and one part was directed against the single owner of the copyright. That appears very readily from Section 1 of the old Act. I will call them for the purposes of this argument, the old Act and the new Act. In that Section, it is provided that it shall be unlawful for these authors and composers, if they constitute a substantial number of persons who own and control copyrights, to combine for the purposes of selling their music. Now, that was directed against the combination. In other words, they said two owners of copyrighted music can't combine where they act to market their product or exact a price. And, your Honors, they use the words 'exact' and 'fix' with sinister implications. The same implication might be applied to a farmers' grange when allof the farmers get together to try to keep up the prices of their products.

Judge Hutchinson: It would be except for the Statute.

Mr. Frohlich: I was only talking in general terms, your Honor. Along this line, there can be no attempt on the part of the copyright owners to combine among themselves to obtain a market for their products, and which they cannot do singly.

In the absence of history in this case, which I have de-[fol. 1017] veloped on the stand, this might be deemed to have been a very correct and good and proper section, but when your Honors have weighed this evidence, you will realize that you can come to no other conclusion and that

is that the individual owners of the performing rights of copyrighted music is as helpless as a babe in the woods. He is helpless, and when Congress enacted, in its Revised Statutes of 1897, this law public performance for profit of a musical composition was made possible, and the Congress of the United States did so to encourage musicla culture, and to give these people who write music something of value to encourage this art. When Theodore Roosevelt in 1909 got up a compilation of all of the copyright Acts he put in that act public performance for profit of musical compositions and it was enacted. Congress meant something when this law was enacted, and with good reason for the history of the country will show that only until you encourage these people to write do we obtain a culture. In o 1856, when, for the first time in this country, Congress gave dramatists the exclusive right of public performance for profit did we have drama-we didn't begin to have drama in this country, your Honors, until that right became a valuable right, and we had no music in this country until Congress came forward in 1897 and 1909 and gave this valuable right and encouragement. It encouraged young men and women to go out and give up their lives to write music for the nation.

This is nothing new, your Honors. It is not a new fight. [fol. 1018] This conflict between creator and user—between the artist and the one who wants to exploit him, has been going on down through the ages, and this, your Honors, is a dramatic moment.

In the 1937 Act—that provided for all authors standing alone. No combination would be able to put a price for the public performance for profit on copyrighted musical compositions which were sold in the State of Florida—

Judge Hutchinson: Section 1 was a general prohibition against the fixing of prices for these things through a combination. What do you say about that section? Does that still exist under the new Act?

Mr. Frohlich: We have the same prohibition. The effect

is identical, because under-

Judge Hutchinson: Are we seeking an injunction against Section 1 of the Act of 1937 as well as these sections of the other Act?

Mr. Frohlich: Yes, your Honor.

Judge Hutchinson: Section 1 is merely a statement that people can't fix prices for musical compositions—combina-

Mr. Frohlich: Yes, sir. Now, Section 2-A and 2-B provide that the music—the physical sheet music would have to have this price fixed—

Judge Hutchinson: How are you interested in that? Do

you want to sell sheet music?

[fol. 1019] Mr. Frohlich: No. We are interested to this extent. When a man had written music ten or fifteen years ago that opened up the entire composition to the public, and he can't touch it if it is in the hands of dealers and jobbers.

Judge Hutchinson: You are interested for your members in Sections 2-A and 2-B although it doesn't refer to com-

binations at all?

Mr. Frohlich: Right. Then, we have this extraordinary situation. When these compositions were performed outside of the State and heard within the State through hookups on broadcasting stations, why, the copyright proprietor couldn't even sue for infringement; once it is performed, it is gone.

Judge Hutchinson: What section is that?

Mr. Frohlich: Section 6. Now, these sections, which are the worst sections of this Act, were designed to make it extremely difficult for the individual to operate. Apparently, the framers of the Statute thought the prohibition against the combination in Section 1 might not be enough, and to make sure they would not be able to work separately they put in Sections 2-A and 2-B—to make it very difficult, almost impossible, and, then, to make sure once more that they could not operate separately they put in Section 6.

I will say this, that each of these sections—that none of these sections can be split up. They must be taken together. You simply can't take these—you can't take this [fol. 1020] Statute and say one section is bad and the others are good. You have got to say what was the object of these Statutes. Each of these sections are interrelated, and have, obviously, a common purpose, and that common purpose is completely and wholly made apparent when you turn to the new Act of 1939, because there the framers of the Statute thought they would overcome the vices of the old Act. They tried to repeal it and were unsuccessful, and as we argue here both Acts are in force. They didn't make the second Act a monopoly or anti-monopoly act. It was never meant

to be an anti-monopoly statute. If you will look at these sections, you will see how cleverly this was done. Section 4-A which is directed at the combination says: "It shall be unlawful for two or more owners Now, what is unlawful? They cannot issue a blanket license unless they make their compositions available to the user with the price of each use. Now, this looks like a simple provision. but the testimony taken here shows conclusively it is impossible of performance for the reason that these people are what? Why, they are members of combinations of two or more persons, and they are required to act alone. They are required to act alone, not in consultation with each other. and they are required to file an affidavit that they are acting alone and are not a member of any combination. That is to say, you can be a member of a combination, but don't you dare sit down with a member of the combination and discuss prices. You go out and make up your own prices, [fol. 1021] and, then, you go out and try to get it. Now. how can these poor devils sit down alone and make up prices? Why, they would spend the rest of their livesmaking up prices for the State of Florida.

Now, bear in mind, your Honors, the inherent vice of this Statute. Nowheres in it is the provision for the payment of royalties. The people that made this Statute knew it couldn't be done, and they didn't take the trouble to provide for payment. There isn't the slightest obligation on the part of the user to pay a penny to the man who has

gone out and fixed these prices.

Now, they figured these people couldn't do it, but they took no chances. They said if you don't belong to a combination then you are acting alone, and you have got to file a list in the State of Florida of the compositions that you want to license for public performance. Why is that necessary! If the forty-eight states of this Union pass similar statutes, you are going to have a man with exclusive rights given to him by Congress filing for registration, as he must, compelled to go into every state in the Union and file a list—a terrific burden, aside from the fact that it is wholly illegal. The state has no such power—Congress alone has the power to subscribe penalties, and I say in all equity and good conscience this has a sinister implication.

When you register your work in Washington, with one [fol. 1022] exception, you don't file an affidavit, and that

exception is when you copyright a book. Since 1909, you may file any other work by merely sending an application and one or two copies of your work, and you receive your registration. But here they want the people to swear under oath that they own these performing rights, and as you heard Mr. Paine testify very often these performing rights are in doubt. You heard him testify that with this great organization that many times it is unable to unravel these rights, and it becomes even more baffling when the original owners pass away. And yet they want this affidavit filed and it it has one inaccuracy the filer of the affidavit would face perjury charges. That is as far as they go with the individual.

Then, they say, "After you have filed your list and after you have signed your affidavit, we want to make you do something more under Section 4-C." They say, "We will prevent you from licensing your work unless you do it on a certain basis." In other words, you can't obtain royalties on a blanket license. You have got to license your works and take a royalty on a per program basis. That, your Honors, is another serious invasion. Your Honors know that from time immemorial plays and books have been licensed on a royalty basis, and I submit there is no great hardship on a blanket license. For example, suppose a man plays music half the day and has other performances the other half. Now, if he pays for a blanket license, he is not [fol. 1023] paying for that half a day. What he pays for is availability—the instantaneous availability of this big reservoir of music so that he may conduct his business. And did your Honors think for a moment that since 1923 when the radio industry mushroomed up, over night, that it would go to the heights it has reached if it wasn't for this blanket license? Your Honors heard the witnesses testify that they not only took a license from ASCAP, but they took a license from SESAC as well, and their own company recently formed the Broadcast Music Corporation and they are operating and offering a blanket license. Why? Because they can't operate otherwise. That is why they are successful. That is the practical side.

When you try to discuss this subject you cannot get away from its practical side, and it is more than a legal question, although, it has been up on its practical side. I say to your Honors that if these two Statutes so affect the practical operations of these copyrights as to destroy them, then, I say, these Statutes are wholly unconstitutional and

have no business on the books. They have the right to come in here and say you have got to accept service and process. You have got to come with books and if you don't do that we will audit your books. But your Honors there hasn't been a single bit of evidence that ASCAP has ever asked for a dollar it is not entitled to, and if there has been anything said about unreasonable rates I haven't heard it. That is one of the tests. If this organization was oppres-[fol. 1024] sive and held these people down and took the last drop of blood, then, I would say they shouldn't exist. I feel just as strongly about this as your Honors do, and I think I have a fairly good sense of right and wrong.

Here is this organization functioning since 1914—a quarter of a century, and what do we see in that time? A motionpicture business coming up from nickelodians and the radio industry coming up from nothing. You have seen within a short space of time great entertainment industries in this United States growing up and becoming successful. Why, one of the witnesses testified this morning that in 1935 the radio people had a volume of eighty-seven million dollars for time on the air-money extracted from advertisers. This is a tremendous amount of money, and isn't the man and woman who writes music entitled to some of it? Why take it away from him? But I say to your Honors if these Statutes remain on the books, it will be impossible to operate in Florida either singly or as a group. It can't be done. And what will happen? Chaos. Chaos not in one industry, but in many industries. I say in all good faith to your Honors-from the legal aspect, from the moral aspect, and from the practical aspect, these two Statutes should be taken as unconstitutional.

In the Nebraska Case the same thing was involved, and the Court heard testimony for a week and came to the conclusion that the Statute had only one thing for its object, and it put its hand on that section and took it and said it was bad. Again and again the same situation con[fol. 1025] fronts us here today. When that case came up on motion for a new trial there was produced twenty-two affidavits from the Legislature who testified that they had in mind a monopoly and anti-monopoly statute, and the Court wouldn't listen to them.

Judge Hutchinson: You couldn't prove what the broadcasters did and what the Legislature did. Mr. Frohlich: Right, your Honor. I have pointed out, I think, in my own humble way, what I conceive to be the bad features of these two statutes, and I am not going to take up the time of the Court with a review of the testimony—I think the Court has an excellent memory as to what has been testified to.

Judge Hutchinson: Is that the whole of your argument?

Mr. Frohlich: I think it is.

Judge Hutchinson: It seems to me that what you have said would appeal to me very greatly if I were a member of the Legislature; as a Legislatureman it would seem to me that the evils which this Act is striking at are very aggravating by this confusion and trouble it is causing. It looks like one of those special acts that goes through a Legislature, but that is no concern of ours. The Legislature may be doing a foolish thing, and if I were to decide this case on the basis that it wasn't a very reasonable Act, I would agree with you right off. I can't see why take the [fol. 1026] copyright owners and hamstring them. It isn't what I think is wise. It seems that the whole question is what rights are due the plaintiffs against a sovereign state when that state undertakes by its legislative voice to declare the public will of that state. As Judges, we are paid to give force to every Legislative act, especially Federal Judges, which does not infrige upon some constitution. I suppose the State of Florida, like every other state, has full legislative powers, and you have to point out some, thing outside of these general views-something in the Federal Constitution or State Constitution which makes these provisions illegal.

Take the first one—Section No. 1, when it comes to a question of State power then the Acts merely make it unlawful for persons to come into the State of Florida and sell compositions the prices for such compositions have been fixed by combinations of the owners. Now, why can't

the State of Florida do that?

Mr. Frohlich: Because the number of individuals have certain rights given to them by Congress—certain exclusive rights, and this includes the right to sell them and to market them.

Judge Hutchinson: Do you have any better right than a man does to his horse? I know the rights I have got to my horse. Nobody can ride him without my permission, and the State can't even fix the price at which I will sell

him. Now, as to a copyright, the owner certainly doesn't [fol. 1027] —the Statute certainly doesn't give the owner of the copyright any less rights than it does to his other personal property. Does it, Mr. Frohlich?

Mr. Frohlich: No, sir, your Honor, because those rights that he has are not rights—they are not the same as common law rights, they are rights given to him by Congress, and those rights cannot be taken away by any state.

Judge Hutchinson: And if Congress had said that these persons shall have the right to combine for the purpose of selling-if Congress had undertaken to lay down the measure of this right of copyrights, in my opinion, no state could interfere with it, but as I understand the Copyright Law, Congress has not undertaken to lay down any conditions under which they can vend or protect themselves. except the two hundred and fifty dollars penalty. Now, I am trying to get to where you are standing. Section says, "It shall be unlawful for any person to sell, license the use of, or in any manner whatsoever dispose of, in this state, the performing rights * * ." Now, I don't believe the State of Florida has got any right to say to the owner of a copyright, you can't sell your copyright in Florida without complying with these restrictions. As my mind runs now, the State has a heavy burden to sustain these exactions upon individual composers, because if you can make this burdensome, and I believe from the evidence it will be, I don't think the State can do it.

[fol. 1028] To me this Act has two separate provisions, one directed against individuals, and, as I see it, the constitutionality of it is very doubtful, because you are dealing with a Federal Copyright which gives a free right to use it. In that sense it is a little better than my horse; the copyright is held by Federal right. Now, when you pass on from there and take all of these sections into consideration, the burden is very heavy on you to show why the State of Florida cannot prevent that combination since Congress didn't say that any number of composers can combine to keep their prices up.

Mr. Frohlich: But Congress said the composer and author has the right to sell it in any manner he pleases. There is no provision against combining. The very fact that Congress has said nothing about a combination—

Judge Hutchinson: Congress didn't affirmatively confer on you the right to combine, and in the absence of that wouldn't the question of combining be a matter of state law? Mr. Frohlich: Not in this Statute because in this Statute the prohibition is directed against people who write musical compositions. It is class legislation.

Judge Hutchinson: The interstate commerce clause might help you; this combination was not formed in the State of

Florida, it was formed somewhere else.

Mr. Frohlich: I was coming to that. It was one of the

points I was going to raise.

[fol. 1029] Judge Hutchinson: You sat down before you came to it. There may be there was something in the combination—if you can't protect yourself in that way, I don't see why we should say Congress has given the copyright owners the right to some complete monopolies.

Mr. Frohlich: The Statute is so worded as to reach only

one small group.

Judge Hutchinson: What is that small group?

Mr. Frohlich: The copyrights of writers and composers. The people who write books and plays-

Judge Hutchinson: You think you might get to that under

the Fourteenth Amendment-class legislation?

Mr. Frohlich: Yes, sir, pure and simple. It is aimed directly at ASCAP, and not against copyright owners. The Act has done the very thing as was done in Louisiana in the sugar case. They can be prosecuted if that are guilty of the violation of any acts, but to have passed a Statute directly aimed at them-

Judge Hutchinson: In Texas we levied against the Standard Oil Company for many, many years on the grounds that it was a trust not formed in Texas, and the statutes provided that no such combination could operate in Texas.

Mr. Frohlich: That was a general statute, your Honor; it wasn't just aimed at one concern. Now, in the American Sugar Institute Case-it was aimed against them. [fol. 1030] Judge Hutchinson: That's something.

haven't got the right to strike at one combination without striking at all of them.

Mr. Frohlich: That's right, your Honor.

Judge Hutchinson: If you penalize the theft of cattle would that be valid as to the theft of the hay?

Mr. Frohlich: I can't go along on that, your Honor. It

is pretty far-fetched.

Judge Hutchinson: Now, as to the Fourteenth Amendment, what else do you say protects you against that com-

bination. All of the points you are making as to how difficult it is going to be to comply has not very much force because of the testimony of your own people-it might take a little time, but you can undoubtedly get up a list. Il of those things don't strike me as much as the question of the copyright. You have got a copyright and Congress has undertaken to protect you, and this Statute is trying to strike it down. Now, there are a lot of people who don't want you to have patents. If that is what these Statutes do, in my opinion, they can't stand, but that is on the theory of conflicting with a granted Federal right. I think it is very well stated by Judge Gardner in this statement here. He stated it very well. He contended that the purpose of this thing was to put ASCAP out of business. I think it was and everybody else thinks it was. I suppose the Statute started out by saying, "Whereas, ASCAP is a [fol. 1031] musical combination and a menace to the people of this State, now, therefore, be it resolved, that we declare ASCAP is a combination that does so and so." You say that's bad; it is picking out ASCAP against all others. But wouldn't you have to show someone else here is doing the-

Mr. Frohlich: It is class legislation because they have gone and passed an Act to stop ASCAP. Now, they can pass a general act.

Judge Hutchinson: You say they are after all of the

societies-SESAC, ASCAP and all of them.

Mr. Frohlich: I think your Honor is cognizant of the fact that it was ASCAP that was the recipient—

Judge Hutchinson: As a matter of fact it is unconstitutional if it is directed at a particular group?

Mr. Frohlich: Yes.

Judge Hutchinson: I think I understand your position

pretty well.

Mr. Frohlich: One other thing, your Honor, as to the police power in the Supreme Court, first notice for temporary injunction, the defendants there said the State had the right to interfere with patent rights and copyrights where it was an evil, or where the health and safety of its citizens are concerned. In the case of Patterson v. Kentucky the defendant was convicted of selling oil by this statute. He defended and said he had a patent on the [fol. 1032] process and the Court held that the safety of the people, there was a fire hazard, was enough to invoke the police power regardless of the patent.

Judge Hutchinson: You say they haven't done this?

Mr. Frohlich: And I say there has been no evil, and no contemplated evil. ASCAP has been in business for twenty-six years. Where is the evil, and why the necessity for the exercise of the police power. I have no further statement to make, your Honor.

Judge Hutchinson: I think I understand your position.

Now, we will hear from the State.

ARGUMENT TO THE COURT

By Mr. Ellis: I am ready, your Honor.

Judge Hutchinson: You will be helpful if you will agree or disagree with my view that there is a distinction between the power of the state as to individuals and as to combinations. Explain to me why there is not a difference.

Mr. Ellis: I think there is probably a difference but I don't think it is material in this case. I think, as your Honor has indicated, that more onerous restrictions could be placed upon a combination by reason of the fact that it is a combination then could be imposed upon an individual who has a copyright. But the view we take of this Statute—the so-[fol. 1033] called restrictions are not unduly onerous on an individual or a combination.

If the Court please, the broad question in this case, of course, was whether by reason of the fact that a copyright is the result of a Federal grant, or because of the nature of a copyright, many of the sections in these Acts are invalid. Substantially that general question must be kept in mind.

Now, the whole case rests upon—so far as the plaintiffs are concerned goes back to one little clause in the Constitution, which I am sure your Honors have considered but which is well to review in this argument. Article 1, Section 8, Clause 8 of the Constitution provides thusly. There is an introductory statement and then it says:

"To promote the Progress of Science and useful Arts, by securing for a limited Time to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." Now, that is all there is in the Constitution of the United States about copyrights or patents. To promote the progress of arts and sciences—

Judge Hutchinson: Read that again. Mr. Ellis: I will read it again verbatim. Judge Hutchinson: Congress has the exclusive rights for patents, but I think the state has something to do with copyrights.

Mr. Ellis: It doesn't except by implication. (Reading:)

[fol. 1034] "To promote the Progress of Science and useful Arts, by securing for a limited Time to Authors and Inventors the exclusive Right to their respective Writings and Discoveries."

Now, I don't contend that the State has any power about granting copyrights. I think copyrights and patents are on the same basis, but that's all there is about inventors or authors under the Constitution. The Federal Government is one of granted powers. The powers not granted were reserved to the people of the United States, which means the states, and the states represent the people. Therefore, unless there is something in the decisions construing that power of Congress to grant copyrights, or something in the nature of a copyright which prevents the State of Florida from enacting laws like this the law is valid.

Now, the case comes before the Court—the Statutes are brought before the Court. The Courts must take up the Statutes with a prima facie function of interpreting the Statutes. If there is any doubt, the Court is bound to sustain them. They must be clearly proved to be contrary to the Federal Constitution.

Let us examine first the nature of the copyright. As Justice Roberts said recently in a gasolene tax case, and, I believe Judge Gardner said almost the same wordsthe legal effect of the copyright statute enacted pursuant to that clause is simply to confer on the author property, or a corporeal—a species of uncorporeal property which [fol. 1035] is substantially the same as any man has-intangible or corporeal property under the common law. That is all the law says and it is evident that is what it was designed to do-to supply a kind of omission in the field of common law. It left the owner of the copyright in exactly the same position as the owner of a horse or automobile, or in the same position as a manufacturer of automobiles, or any kind of a trade or business, and they are in exactly the same position as any of those people with respect to the operation of the police power of the state. That can be illustrated repeatedly by calling your

Honors' attention to the decisions, which in some instances sustain the power of the state to prohibit entirely the sale of a patented article. In a case where some defendants who were either prosecuted or against whom an injunction was sought, it makes no difference for the purposes of this argument, they were prosecuted because they were operating a lottery, and defendants claimed that could not be done because they had a patent on the manner of conducting the lottery, and that the state couldn't prohibit them on account of this Federal right, and the Court decided against that: And in the same way the sale of various deleterious substances has been prohibited although patented. And I have no doubt that the laws of any state operate against the publication of obscene matter or the broadcasting of obscene material over the radio although that material may be copyrighted. The authority by which those laws were sustained is the same authority under [fol. 1036] which the State of Florida has enacted these laws, and that is the police power. They are in the same field.

Judge Hutchinson: The difference is there is nothing in violation of any police regulations for a man to sell his musical copyrights. You don't require your merchants to register all of their products with the Comptroller, but you just say these holders of musical copyrights have got to do a lot of registering.

Mr. Ellis: There are certain kinds of dealers in various substances who must submit to tests and file reports and put on labels on the packages.

Judge Hutchinson: But what is the necessity for requiring these people to file? I am not talking about monopoly, but what is the necessity for requiring them to file? I don't think you can do that. A man who has got a copyright has the right to sell it through one or to sell it through ten. Section 4-C says, "It shall be unlawful for any person selling, licensing the use of or in any manner whatsoever disposing of or contracting to dispose of in this state public performing rights in or to any musical composition or dramatico-musical composition, to make any charge or to contract for or collect any compensation as a condition of using said performing rights based in whole or in part " "; that's the one prohibiting him. Now, why can't he?

the state of the s

Mr. Ellis: If it is played he has that right, your Honor. [fol. 1037] Judge Hutchinson: Then, there is another one down here that says if you let one you must let them all at the same price.

Mr. Ellis: I am not aware of any such section, your

Hondr.

Judge Hutchinson: Section 4-A says: "It shall be unlawful * * to publicly perform for profit each such copyrighted musical composition owned by him or it at a price established for each separate performance * * *", now, that's the combination article.

Mr. Ellis: Yes, sir.

Judge Hutchinson: I would like to know why I can't sell. You have got a big business, and I have got my potatoes, and I want to fix the price on the basis of the business you do. It is regulating the way I sell my strawberries. Now, why can't you regulate the way you sell the music?

Mr. Ellis: That's a plausible argument. If it wasn't, I am sure your Honor wouldn't make it. But the way I understand the legal effect of the Constitution of Florida and the decisions of the Supreme Court they lead to this inescapable conclusion—

Judge Hutchinson: I am not saying this exclusively about copyrights, but you could do this with a mule or a horse,

and that's what you are trying to do here.

Mr. Ellis: In that respect, I think this is different.

[fol. 1038] Judge Hutchinson: Why?

Mr. Ellis: Because the right to a copyright is only such as is granted by a Statute and can go no further than as is granted by Statute and as that Statute is construed by the Supreme Court.

Judge Hutchinson: The rights to a copyright is less than property? Judge Gardner says that is not so.

Mr. Ellis: I don't reach that result in that manner.

Judge Hutchinson: I am not trying to over come you.

Mr. Ellis: I appreciate very much your Honor's suggestions. I started to suggest that the Court indicate the different points you are particularly interested in, and—

Judge Hutchinson: I think I am about through. You can't do anything with these individuals at all because they are not doing anything that is wrong, but to sell a little music by the combination might be different.

Mr. Ellis: Of course, they only sell about six million dollars worth a year. This is considered by some as a legalized racket—the same as the Amenberg Case. Now, of course, I don't view it that way, but many people do, and the Legislature evidently had some thoughts along that line in mind when it passed this Act. This Act is not meant to destroy them, but to curb them. Your Honor will observe from the evidence of the broadcasters—one of them said ASCAP could do a lot of good, and this is not [fol. 1039] intended to destroy them.

Judge Hutchinson: You are talking about ASCAP. I am talking about the individual. What about Section 4-C?

Mr. Ellis: The process of logic upon which I rest my conclusions of the validity of Section 4-C is about like this, in the absence of Statutes, in the absence of this constitutional clause and the Copyright Law, no composer of music would have any copyright.

Judge Hutchinson: No protection, you mean?

Mr. Ellis: No valuable right at all.

Judge Hutchinson: Yes, that is what I mean.

Mr. Ellis: The extent of that right depends, therefore, upon the Constitution, the Statute, and the decisions of the Supreme Court under that. The decisions of the Supreme Court with reference to patents and copyrights all rest upon the same principles, because copyrights and patents are both granted under the identical Constitutional clause. The Supreme Court of the United States in the Ethyl Gasoline Corporation case v. the United States, March 25th of this year—as I understand it, that the holder of a patent has conferred upon him by the act of Congress a right to the exclusive control of that patent to sell it, to split up the interests in it, and even to say, to some extent, what the venders should do with it, but in collecting compensation for the licensing of the right to manufacture or invent a patented article, he cannot lawfully [fol. 1040] exact any compensation except for the use or sale of the patented article to which he has a legal right. His legal right does not extend, and never was granted either by the Constitution or the Act to the exaction of Compensation from anybody, no matter how willing he is to pay it, based upon the accompanying sale of another article, or on the volume of business he does. This is what the Court said, and if I am wrong it is because I have misconstrued the language of the Court.

Mr. Justice Stone said in his opinion, "The patent law confers on the patentee a limited monopoly, the right or power to exclude all others from manufacturing, using, or selling his invention. The extent of that right is limited by the definition of his invention, and its boundaries are marked by the specifications and claims of the patent." Now, right there the extent of a copyright holders right is limited by the extent of his composition. He is not granted a right in anything except that composition.

Judge Hutchinson: What was the real controversy there?

Mr. Ellis: In this case? The Ethyl Gaso-

Judge Hutchinson: Yes. I thought this case was where they tried to regulate prices charged to some person.

Mr. Ellis: What they did in this case, the Ethyl Gasoline Corporation would sell the right to refiners to take its fluid and combine it with oil to make a better grade [fol. 1041] of gasoline—

Judge Hutchinson: Did they refuse to pay the price?

Mr. Ellis: It came up under the Sherman Anti-Trust
Act.

Judge Hutchinson: They held that that could not be fixed except by the patent right?

Mr. Ellis: Yes, sir.

Judge Hutchinson: That's all that case held. Did they hold that a patent owner must give his price in a certain, particular form? Did they say a patentee can't say to a man, "I will let you use my patent, and I will base my price on your gross sales?

Mr. Ellis: I don't consider this part of the case was decided—

Judge Hutchinson: Who was suing who?

Mr. Ellis: This was a suit to restrain the Ethyl Gasoline Corporation.

Judge Hutchinson: Who sued them?

Mr. Ellis: The United States.

Judge Hutchinson: The only thing before that Tribunal was whether or not the patentees were in violation of the Anti-Trust Laws; there was no question of somebody trying to force a contract. They got the injunction?

Mr. Ellis: Yes, sir.

[fol. 1042] Judge Hutchinson: You say the case we have been considering holds that a person holding the patent rights can only sell his patent rights for cash—not having

an interest in the business, and not based on the gross proceeds in any way—

Mr. Ellis: I don't mean to say that.

Judge Hutchinson: That's what this Statute says. You can't sell it by taking into consideration the value to the person using it. You have got to make your price based on a particular use; that's pretty limited.

Mr. Ellis: That is not my conception.

Judge Hutchinson: What do you think it means?

Mr. Ellis: My understanding of that section of the Statute is the holder of a copyright of a musical composition is prohibited from charging radio broadcasting stations for the use of that composition—a price based upon the percentage—profits, from one hundred other compositions.

My contention is this that under the definition of the extent of the patent right, as laid down by the Supreme Court not only in this case but in five or six cases that they referred to, the copyright corresponds to musical compositions.

Judge Hutchinson: Suppose a man tells you for a whole year you are not to appear in any case. He retains you not to appear, and now these people restrain you from using you in this case. What is wrong with that? It is merely [fol. 1043] payment for the right to use when called on.

Mr. Ellis: Your Honor has not let me develop my point. My contention, in short, is this, and I am very serious about this. That when a state prohibits that practice of a copyright holder, exacting extra compensation, there is nothing in the Federal Statute—in the Constitution or Statutes, which keeps the state from doing so.

Judge Hutchinson: How can you call it extra compensation when it is the compensation agreed on?

Mr. Ellis: It is extra in that it is not related to the use of the copyrighted article.

Judge Hutchinson: What is the trouble with people making a price on music? What is wrong with that? What police power is involved? There is no harm in it.

Mr. Ellis: I am speaking of the money exacted for the use of a copyrighted article.

Judge Hutchinson: It is for the privilege of using it at any time they want it—every day, every night, every other day. What is the matter with making a contract like that? It is a discrimination to pick out a man that has musical rights. Why should these people be picked out. It is a violation of the Fourteenth Amendment and of your own State Constitution. You can't discriminate against people that way just because you don't like the color of their hair. It is a violation of the Fourteenth Amendment unless you say copyright people are not protected by the [fol. 1044] Fourteenth Amendment.

Going back to Section 2, how can you put all of these burdens on individual composers. Why should he be subjected to all of these things? What is the reason? Is there

a reason?

Mr. Ellis: I think so. However, I would like to get onto Section 4-C, your Honor.

Judge Hutchinson: Certainly.

Mr. Ellis: I want to read to the Court from this opin-

Judge Hutchinson: Of course, I will treat that opinion with great care.

Mr. Ellis: Here is what the Court said:

"The extent to which appellant's dominion over the jobbers' business goes beyond its patent monopoly is emphasized by the circumstances here present that the prices and market practices sought to be established are not those prescribed by appellant-patentee, but by the refiners. Appellant neither owns nor sells the patented fuel nor derives any profit through royalties or otherwise from its sale. It has chosen to exploit its patents by manufacturing the fluid covered by them and by selling that fluid to refiners for use in the manufacture of motor fuel. Such benefits as result from control over the marketing of the treated fuel by the jobbers accrues primarily to the refiners and indirectly to appellant, only in the enjoyment of its monopoly [fol. 1045] of the fluid secured under another patent. The licensing conditions are thus not used as a means of stimulating the commercial development and financial returns of the patented invention which is licensed, but for the commercial development of the business of the refiners and the exploitation of a second patent monopoly not embraced in the first. The patent monopoly of one invention may no more be enlarged for the exploitation of a monopoly of another than for the exploitation of an unpatented article, or for the exploitation or promotion of a business not embraced within the patent."

BLANK PAGE